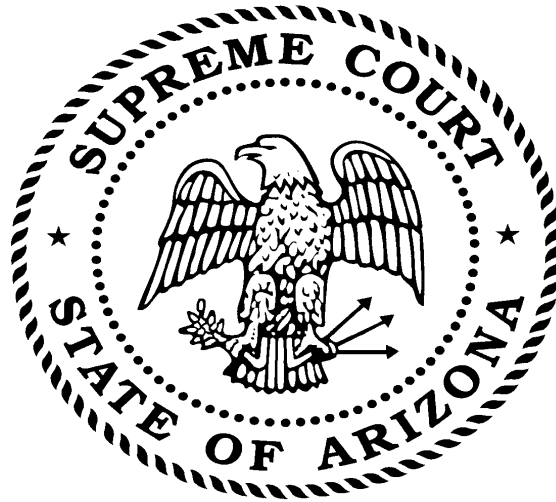


ARIZONA SUPREME COURT  
Administrative Office of the Courts  
Certification and Licensing Division



CERTIFIED REPORTER  
INDIVIDUAL CERTIFICATION  
CANDIDATE STUDY GUIDE

Certified Reporter Program  
1501 West Washington, Suite 104  
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January 2007

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# 1. INTRODUCTION

|                             |  |
|-----------------------------|--|
| AUTHORITY                   | Arizona Revised Statutes (ARS) § 32-4001 through § 32-4042 and Arizona Code of Judicial Administration (ACJA) § 7-201 and § 7-206 establish the authority for administration of the Certified Reporter Program by the Arizona Supreme Court. The Court administers the Program through the Certification and Licensing Division of the Administrative Office of the Courts.  |
| DEFINITION                  | ACJA § 7-206 defines certified reporters as those individuals who record and transcribe a verbatim record in any sworn proceeding by means of written symbols or abbreviations in shorthand, machine writing or voice writing, as provided in ARS § 32-4002 (3).   |
| REQUIREMENT FOR EXAMINATION | <p>All candidates for certification as a certified reporter shall successfully pass the National Court Reporters Association's Registered Professional Reporter (RPR) examination or the National Verbatim Reporters Association's Certified Verbatim Reporters (CVR) examination, and a written knowledge test of rules and Arizona statutes relating to certified reporters.</p> <p>All potential candidates for certification must take and pass the examinations to be eligible for certification.</p> |
| PURPOSE OF THIS HANDBOOK    | The purpose of this handbook is to provide candidates with detailed information about the examination for certification as a certified reporter. The handbook includes information about subject matter areas assessed by the examination, candidate responsibilities on the day of the examination, and notification of examination results.  |

## 2. APPLICATION POLICIES AND PROCEDURES

|                             |  |
|-----------------------------|--|
| ELIGIBILITY                 | <p>All potential candidates for certification must successfully complete the RPR or CVR examinations and the Arizona written knowledge test, submit a completed application for certification, including the application fee, and possess the education or experience as outlined in ACJA § 7-201 and § 7-206.</p>   |
| CONFIRMATION OF ELIGIBILITY | <p>Potential candidates applying for certification must register for an examination session as prescribed by instructions posted on the Program website at <a href="http://www.supreme.state.az.us/cr/">www.supreme.state.az.us/cr/</a></p> <p>Pursuant to A.R.S. § 32-4022, “A person shall not be admitted to an examination without presenting satisfactory evidence to the board that before the date on which the application for an examination was filed the person has done at least one of the following:</p> <ol style="list-style-type: none"><li>1. Obtained one year of experience in making verbatim records of meetings, conferences, hearings or judicial or related proceedings by means of written symbols or abbreviations in shorthand, machine writing or voice writing and in transcribing these records.</li><li>2. Obtained a verified certificate of the satisfactory completion of a prescribed course of study from a court reporting school or a certificate from a school that evidences the equivalent proficiency and the ability to make a verbatim record of material that is dictated pursuant to rules adopted by the supreme court.</li><li>3. Obtained a national court reporters association’s registered professional reporter or registered merit reporter certificate.</li><li>4. Obtained a valid certificate to practice court reporting that is issued by a state other than this state if the other state’s requirements and certifying examination are substantially similar to or more stringent than those in this state.</li><li>5. Demonstrated reasonable proficiency in making verbatim records of trial or judicial or other related proceedings by passing an approved examination for certification pursuant to rules adopted by the supreme court.</li></ol> <p>Available seats for the examination are filled on a first come, first-serve basis. Examination staff reserves the right to limit the number of seats available at each administration. All candidates who fail to appear for a scheduled examination will be assessed a fee as prescribed by ACJA § 7-206.</p> |

#### FEES

The fee for participating in the examination is \$50.00. If it becomes necessary for an applicant to retake the examination, the fee is \$50.00. If a candidate registers for the exam and fails to appear as scheduled, the candidate will be assessed a \$50.00 re-registration fee.

#### SPECIAL ACCOMMODATIONS

Requests for special accommodations in accordance with the Americans with Disabilities Act of 1990 must be submitted to the Certification and Licensing Division with substantiating documentation.

Requests must include a description of the nature of the disability and limitations related to the examination, the type of accommodation(s) requested and verification from a qualified professional. The qualified professional must have special expertise to evaluate the existence of the disability and proposed accommodations needed for the specific disability. Requests are reviewed and granted on an individual basis.

### 3. OVERVIEW OF THE EXAMINATION

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|---------------|--|
| TIME LIMITS   | Candidates are allowed a total of three (3) hours to complete the examination. Candidates may wish to complete the multiple-choice questions in any order; however, candidates are responsible for managing their own time.  |
| FORMAT        | <p>The examination consists of 100 multiple-choice questions worth one point each. There is one correct answer for each question. There is no penalty for guessing; therefore, candidates should answer all of the questions.</p> <p>The multiple-choice questions cover subject matter areas related to recording and producing a verbatim record of proceedings (see Content Specifications, Section 4). The questions are designed to demonstrate you possess the basic knowledge, skills, and abilities to report proceedings.</p> |
| PASSING SCORE | <p>The passing score is the score that a candidate must achieve in order to pass the examination and qualify for certification as a certified reporter in Arizona.</p> <p>The passing score for the examination is a score of 70 out of the possible 100 points. Scoring is not based on a candidate achieving a passing score in each of the content specification areas, but rather is reflective of the overall score on the examination.</p>   |

## 4. CONTENT SPECIFICATIONS

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### CONTENT AREAS

The content for the examination was developed by a focus group of certified reporters from representative practice settings in January 2007. They evaluated the importance of major subject matter areas of practice, determined their relative importance to practice, and assigned a weight (percentage) to each area. For example, if the weight is 25%, there would be 25 questions on a 100-item examination.

There are five content areas outlined in the content specifications:

- I. Transcript production (25%)
  - A. Transcripts
  - B. Timeliness of transcripts
  - C. Certification of transcripts
  - D. Rough drafts
  - E. Notes
- II. Transcript distribution (10%)
  - A. Filing
  - B. Distribution
  - C. Original and copies
  - D. Expedited transcripts
  - E. Media
- III. Certificate holder responsibilities (15%)
  - A. Changes in name and address
  - B. Certification
  - C. Revocation and suspension of certificate
  - D. Hearings
  - E. Administrative
- IV. Ethics (25%)
  - A. Impartiality
  - B. Conflicts of interest
  - C. Contracts
  - D. Gifts, incentives, rewards, contingent fees
  - E. Ethical dilemmas
- V. Professional practice (25%)
  - A. Confidentiality
  - B. Going on and off the record
  - C. Advertisement of services
  - D. Accurate representation of qualifications, skills, or abilities
  - E. Fees
  - F. Grounds for discipline



- G. Oaths and affirmations
- H. Freelance activities for official reporters
- I. Affidavit of non-appearance
- J. Grand jury
- K. Continuing education

The above specified percentages of content area questions will be randomly ordered on the examination. For example, questions on oaths and affirmations, will not be contained in one section or placed in consecutive order.

## 5. SAMPLE QUESTIONS

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These specific questions will not be on the examination but are representative of the types and format of the questions on the examination.

1. What information must appear in a deposition transcript?
  - A. Location where the proceedings took place
  - B. A copy of the witness' driver's license
  - C. The attorneys' bar numbers
  - D. The witness' address
2. Which of the following items are required in a complaint form?
  - A. Name and address of the complainant
  - B. Name and telephone number of the certificate holder
  - C. Telephone number and fax number of the complainant
  - D. Address of the certificate holder and the alleged statutory violation
3. A certified reporter is asked to perform an assignment and is told that it will be a class-action product liability case. The certified reporter is not confident of her ability to perform the assignment. What action should be taken by the certified reporter in this situation?
  - A. Decline the assignment
  - B. Accept the assignment but inform the attorneys of the certified reporter's limitations
  - C. Accept the assignment and have another reporter assist in the preparation of the transcript
  - D. Accept the assignment and prepare the transcript to the best of the certified reporter's abilities
4. During a deposition, an argument begins between the attorneys during examination of a witness. One attorney asks the certified reporter to go off the record. What action, if any, should the certified reporter take in this situation?
  - A. Go off the record as requested
  - B. Go off the record if the witness agrees
  - C. Do not go off the record during a deposition
  - D. Verify that all the parties agree, then go off the record

ANSWERS: A, A, A, D

## 6. EXAMINATION POLICIES AND PROCEDURES

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### EXAMINATION SECURITY

Candidates cannot receive any unauthorized assistance during the examination, including but not limited to any of the following:

- Impersonating another person in order to take the examination on that person's behalf;
- Communicating examination content to any person (during or after the examination);
- Removing examination materials from the examination room for the purpose of selling, distributing, buying, receiving, or having unauthorized possession of any portion of the examination;
- Having in one's possession books, equipment, notes, written or printed materials, data, other than the examination materials distributed;
- Reproducing examination materials or providing notes of examination content to any persons other than the examination staff; and,
- Obstructing or subverting the administration of the examination.

Any candidate who violates examination security policies is subject to denial of certification pursuant to ACJA §§ 7-201 and 7-206.

### ARRIVAL AT THE EXAMINATION

On the day of the examination, the candidate must arrive at the designated examination site no later than the established registration time.

### TARDINESS

An examination will not be disrupted to accommodate late arrivals. If a candidate reports late, the candidate will not be permitted to take the examination and will be required to pay prescribed fees for later participation.

|                      |  |
|----------------------|--|
| REGISTRATION         | <p>The candidate <u>must</u> report to the registration area and present photographic identification (e.g., state-issued driver's license, military-issued identification or government-issued passport). The candidate will not be permitted to take the examination if they have not pre-registered and/or if they do not have the required photographic identification.</p> <p>At the time of the examination, all candidates will be required to sign an acknowledgement of the examination security policies and a non-disclosure agreement.</p>  |
| NO SHOW POLICY       | <p>If a candidate fails to show up for the examination, the candidate must re-register for the examination and pay the applicable fees.</p>  |
| MATERIALS TO BRING   | <p>Other than photographic identification, you will be provided with all material necessary to participate in the examination process.</p>   |
| PROHIBITED MATERIALS | <p>Candidates cannot bring communication devices, reference materials, photographic equipment or electronic devices into the examination room. The following items are examples of prohibited materials:</p> <ul style="list-style-type: none"> <li>• Cellular phones and pagers</li> <li>• Candidate handbooks, technical reference books and dictionaries</li> <li>• Cameras and videographic recorders</li> <li>• Radios and tape recorders</li> <li>• Laptop computers</li> <li>• Programmable electronic organizers, personal digital assistants (PDAs)</li> <li>• Drinks and food</li> </ul>   |
| PERSONAL BELONGINGS  | <p>Candidates may keep keys, wallets and purses on the floor near their seat during the examination. Larger items (e.g., backpacks, briefcases, duffel bags, handbags, tote bags) and outerwear (e. g. coats, hats) CANNOT be brought into the examination.</p> <p>Examination staff will <u>not</u> be responsible for monitoring candidates' personal items during the examination. If a candidate reports with prohibited materials or belongings the candidate will be asked to make alternative arrangements before you start the examination.</p> <p>If securing belongings results in the candidate being late for the examination, the candidate will not be permitted to take the examination and will need to reschedule and submit any applicable fees.</p> |

CHECK-OUT  
PROCEDURE

All examination materials including test booklets, answer sheets, pencils and any notes taken during the examination must be returned to the examination staff. Failure to do so will void the candidate's examination.

DISRUPTIVE  
BEHAVIOR

Candidates who engage in behavior that is disruptive to other candidates will be disqualified from the examination process.

Examples of disruptive behavior during the examination include:

- Eating and drinking during the examination;
- Allowing the alarm features of programmable wristwatches or other timepieces to emit sound; or
- Talking, whispering, or otherwise attempting to communicate with other candidates for any reason.

LEAVING THE ROOM  
DURING THE  
EXAMINATION

Candidates will not be permitted to leave the examination room for any purpose unless accompanied by a member of the examination staff. Candidates will NOT receive extra time to complete the examination. Failure to follow this rule will result in the candidate's examination being voided.

## 7. EXAMINATION RESULTS

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### NOTIFICATION OF RESULTS

Examination results will be sent to each candidate by mail at the address on file with the program within thirty (30) days of completion of the examination. Do NOT call the Certification and Licensing Division or make inquiries by email or in person requesting examination results. Examination results will NOT be released to third parties.

### RE-EXAMINATION

A candidate who fails to pass the written examination may retake the examination at any time provided the candidate is not disqualified from retaking the examination for fraud, dishonesty, or corruption while taking the examination.

## 8. REFERENCES

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The following list of references provides a complete and comprehensive list of the references related to the examination questions. There are no references listed that are not reflected in the questions which may be present on the examination. All cited references refer to the version of the reference as of January 2007. Any amendments adopted to the references after January 2007 will not be included in the examination. Every reference you will need to be familiar with for the purpose of the examination is contained in Section 9 of this study guide.

1. ACJA 7-201 (A) - Definitions
2. ACJA 7-201 (E) – Initial Certification
3. ACJA 7-201 (F) – Role and Responsibilities of Certificate Holders
4. ACJA 7-201 (G) – Renewal of Certification
5. ACJA 7-201 (H) – Complaints, Investigations, Disciplinary Actions, Proceedings and Certification and Disciplinary Hearings
6. ACJA 7-206 (C) – Purpose
7. ACJA 7-206 (D) – Administration
8. ACJA 7-206 (E) – Initial Certification
9. ACJA 7-206 (F) - Role and Responsibilities of Certified Reporters
10. ACJA 7-206 (G) – Renewal of Certification
11. ACJA 7-206 (J) – Code of Conduct
12. ACJA 7-206 (K) – Fee Schedule
13. ACJA 7-206 (L) – Continuing Education Policy
14. ACJA 7-206 (M) – Transcript Format Standards
15. ARS 12-224. Salary; fees for transcripts; free transcripts; office supplies
16. ARS 12-225. Appointment of deputies; compensation
17. ARS 21-411. Appointment of reporter; transcript
18. ARS 22-261. Judgments which may be appealed
19. ARS 32-4002. Definitions
20. ARS 32-4004 (A). Board of certified reporters
21. ARS 32-4005. Program administration; duties
22. ARS 32-4022. Examination; requirements; exemption
23. ARS 32-4023 (A). Certificate renewal
24. ARS 32-4023 (D). Certificate renewal
25. ARS 32-4024. Certification denial
26. ARS 32-4025. Administration of oaths
27. Rules of Civil Procedure, Rule 30(a). When Depositions May Be Taken
28. Rules of Civil Procedure, Rule 30(b). Notice of Examination; General Requirements; Special Notice; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone
29. Rules of Civil Procedure, Rule 30(c). Examination and Cross-Examination; Record of Examination; Oath; Objections
30. Rules of Civil Procedure, Rule 30(d). Length of Deposition; Motion to Terminate or Limit Examination

31. Rules of Civil Procedure, Rule 30(e). Submission to Witness; Changes, Signing
32. Rules of Civil Procedure, Rule 30(f). Certification and Delivery by Officer; Exhibits; Copies
33. Rules of Civil Procedure, Rule 43(k). Preservation of verbatim recording of court proceedings.
34. Rules of Supreme Court, Rule 91(h) Uniform Size of Electronic and Paper Transcripts
35. Rules of Criminal Procedure, Rule 12.8, Record of proceedings before grand jury
36. Rules of Criminal Procedure, Rule 31.2(b). Notice of appeal; automatic appeal; joint appeals
37. Rules of Criminal Procedure, Rule 31.8 (b)(2) and (3). The record on appeal; transcript; duty of the authorized transcriber
38. Rules of Criminal Procedure, Rule 31.8 (d). The record on appeal; transcript; duty of the authorized transcriber
39. Rules of Criminal Procedure, Rule 31.9. Transmission of the record
40. Rules of Criminal Procedure, Rule 32.4 (d). Commencement of proceedings
41. Administrative Order Number 2006-29
42. ACJA 3-402 - Records Retention and Disposition



## 9. APPLICABLE ACJA SECTIONS, RULES, ORDERS AND STATUTES

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### ACJA 7-201 (A) - Definitions

**A. Definitions.** In this section, unless otherwise specified, the following definitions apply:

“Accredited” means placement on a list of nationally recognized authorizing agencies the United States Secretary of Education determines to be reliable authorities as to the quality of education or training provided by the institutions of higher education and the higher education programs they sanction.

“ACJA specific section” means the adopted section of the Arizona Code of Judicial Administration (ACJA) applicable to a specified profession or occupation governed by this section, specifically, § 7-202: Fiduciaries; § 7-203: Confidential Intermediary; § 7-205: Defensive Driving Schools and Instructors; § 7-206: Certified Reporters and § 7-208: Legal Document Preparers.

“Active” means a valid and existing certificate to practice in the specified profession or occupation.

“Advisory letter” means written communication from the board notifying a certificate holder the conduct, while not warranting discipline, may result in future disciplinary action if not modified or eliminated. An advisory letter is not a disciplinary action.

“Censure” means a written formal discipline sanction, finding a certificate holder has violated one or more provisions of the statutes, court rules, or applicable sections of the ACJA.

“Certificate holder” means any entity or individual granted and currently holding valid certification pursuant to the applicable ACJA section and Arizona law.

“Certification” means a process conducted by a board to determine if a person or entity meets all requirements to practice in the profession or occupation, pursuant to statutes, court rules and the applicable ACJA section.

“Community college” means an accredited educational institution providing training in the arts, sciences and humanities beyond the twelfth grade of the public or private high school course of study or vocational education, including terminal courses of a technical and vocational nature and basic adult education courses.

“Consent agreement” means a written statement to resolve a certification, complaint or compliance audit matter, voluntarily signed by the applicant or certificate holder.

“Corrective action plan” means the measures outlined and agreed upon by division staff and the certificate holder to correct all deficiencies after a compliance audit or defensive driving course monitoring is completed.

“Deputy director” means the deputy director of the administrative office of the courts (AOC) or the deputy director’s designee.

“Designated principal” means an active certificate holder of a business or public entity who is designated specific responsibilities pursuant to the applicable sections of the ACJA.

“Director” means the administrative director of the courts or the director’s designee.

“Disciplinary clerk” means the individual or the individual’s designee of the certification and licensing division designated to accept all filings relevant to denial of initial or renewal certification of applicants and discipline of certificate holders.

“Division director” means the director of the certification and licensing division of the AOC or the division director’s designee.

“Division staff” means all members of the certification and licensing division of the AOC, including the division director.

“Disciplinary action” means either informal or formal proceedings against a certificate holder, after a finding of probable cause the certificate holder has committed acts of misconduct or violations of statutes, court rules, or the applicable sections of the ACJA.

“Dismissed with prejudice” means final disposition barring future action under this section on the same issue, claim, or cause.

“Dismissed without prejudice” means final disposition with the right to bring future action under this section on the same issue, claim or cause.

“Expired” means the certificate has lapsed on a specified date.

“Filing” or “filed” means a document has been received and date-stamped by the disciplinary clerk.

“Formal statement of charges” means the document setting forth specific alleged acts of misconduct or violations by a certificate holder of statutes, court rules, or the applicable sections of the ACJA, including any amendments, authorized by the board, upon a determination of probable cause.

“Formal disciplinary proceedings” means the process initiated upon a determination of probable cause, the alleged acts of misconduct or violations of the statutes, court rules, or the applicable sections of the ACJA by a certificate holder, that if true, would warrant a censure, consent agreement or other negotiated settlement, restrictions, probation, additional training, a cease and desist order, suspension or revocation of certification pursuant to subsection (H)(24)(a)(6).

“Good cause” means a legally sufficient ground or reason based upon the circumstances of the presented case.

“Hearing officer” means an individual appointed by the supreme court to preside over administrative hearings pursuant to this section.

“Inactive” means a certificate holder who voluntarily decides not to practice in the specified profession or occupation for a specified period of time and who is not the subject of any pending disciplinary action.

“Informal disciplinary proceedings” means the process initiated upon a determination of probable cause the alleged acts of misconduct or violations of the statutes, court rules, or applicable sections of the ACJA by a certificate holder, that if true, would warrant a letter of concern, pursuant to subsection (H)(24)(a)(6)(a).

“Injury” means harm to a client, customer, the public, judicial or legal system, the profession, or occupation resulting from a certificate holder’s misconduct.

“Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

“Letter of concern” means a written informal discipline sanction finding a certificate holder has violated one or more provisions of the statutes, court rules, or the applicable sections of the ACJA.

“Minimum competencies” means having the required skills for an adequate level of performance.

“Negligence” means deviation from the standard of care a reasonable certificate holder would exercise in the situation.

“Probable cause” means reasonable grounds for belief in the existence of facts concerning alleged acts of misconduct or violations by a certificate holder, warranting informal or formal discipline against the certificate holder.

“Probation” means a written formal discipline sanction finding a certificate holder has violated one or more provisions of the statutes, court rules, or applicable sections of the ACJA but allowing the certificate holder to practice in their profession or occupation under specified conditions for a set period of time.

“Professional regulatory entity” means a government or private unit associated with and having authority over a group of qualified and practiced individuals in a profession or occupation.

“Revoked” or “revocation” means a written formal discipline sanction, finding a certificate holder has violated one or more provisions of the statutes, court rules, or applicable sections of the ACJA and the certificate to practice in the profession or occupation is rescinded.

“Sanction” means an explicit and official action resulting from an informal or formal disciplinary action finding a certificate holder has violated or failed to comply with one or more of the statutes, court rules, applicable sections of the ACJA, court orders or board orders relevant to the certificate holder’s profession or occupation.

“Section” means the referenced provision of the ACJA.

“Suspended” or “suspension” means a written formal discipline sanction finding a certificate holder has violated one or more provisions of the statutes, court rules, or applicable sections of the ACJA and the certificate holder is not permitted to exercise the privileges of the certificate for a set period of time as the result of a final order of disciplinary action.

“Valid” means a certificate currently in effect, granted by the board and not expired, surrendered, suspended, or revoked.

“Voluntary surrender” means a certificate holder decides to discontinue practice in the specified profession or occupation and returns the certificate to the board for review and acceptance pursuant to subsection (E)(7).

## **ACJA 7-201 (E) – Initial Certification**

### **E. Initial Certification.**

#### **1. Application for Initial Certification.**

- a. Forms. An applicant shall apply for certification on approved forms and file them with division staff.
  - (1) Division staff shall conduct a preliminary review of the submitted application and determine if the application is deficient, the required supporting documents are deficient, fees are deficient, or a combination of these requirements are deficient.
  - (2) Division staff shall advise the applicant in writing of the deficiencies.
  - (3) The applicant shall provide the information and a written response to correct or explain the deficiencies, or otherwise remedy the defects in the application, supporting documents or fees.
  - (4) Division staff may require the applicant to provide additional information or an explanation reasonably necessary to determine if the applicant meets the required qualifications specified in this section or the applicable sections of the ACJA.
  - (5) Upon receipt of a complete application, division staff may conduct a personal credit review and review records regarding an application for initial certification, consistent with the policies and procedures developed by the director pursuant to subsection (D)(2)(a)(5).
  - (6) The applicant shall notify division staff of any changes relevant to the application for certification within five days of the change.
  - (7) Upon a final review of the application, division staff shall prepare and forward to the board a written recommendation regarding the applicant’s qualifications and eligibility for certification.

- (8) Division staff shall advise the board in any written recommendation regarding certification of an applicant, of any complaints alleging acts of misconduct or violations of statute, court rules or order, this section, or the applicable sections of the ACJA, if the allegations occurred during the time the applicant held an active certificate and were received after the applicant's certificate expired.
- (9) The division staff's written recommendation to the board shall note any deficiencies in the application. A deficient application for initial certification is lacking one or more of the following requirements:
  - (a) An explanation or correction of any deficiencies, pursuant to subsection (E)(1)(a)(4);
  - (b) Payment of all appropriate fees, pursuant to subsection (E)(1)(b);
  - (c) A photograph, pursuant to subsection (E)(1)(c); or
  - (d) A readable fingerprint card or affidavit in lieu of a fingerprint card, pursuant to subsection (E)(1)(d).
- (10) The board, upon review of the division staff recommendation, may request an informal interview with an applicant for certification, pursuant to subsection (D)(5)(c)(2)(a), to establish if:
  - (a) Additional information is needed to determine if the applicant meets all qualifications for certification in this section and the applicable section of the ACJA;
  - (b) An explanation of the information provided by the applicant is needed to determine if the applicant meets all qualifications for certification in this section and the applicable section of the ACJA; or
  - (c) Any complaints, regarding allegations of misconduct or violations of the statutes, court rules or applicable sections of the ACJA, received after the applicant's original certificate expired, require investigation by division staff pursuant to subsection (E)(1)(a)(4).
- b. Fees. The applicant shall submit, with the application, any applicable certification, examination and training fees specified in the applicable sections of the ACJA. Fees are not refundable or waivable. An applicant shall make the payment for any fee payable to the Arizona Supreme Court. An application submitted without fees is deficient.
- c. Photograph. The applicant for certification shall provide with the application, one color passport-size photograph, two inches by two inches of the applicant's head, neck and shoulders only. The applicant shall ensure the photograph was taken within the last two years and clearly identifies the applicant. An application submitted without a photograph is deficient.
- d. Fingerprinting. If required pursuant to law, the applicant shall submit with the application, a full set of fingerprints, with the fee established by law, for the purpose of obtaining a state and federal criminal records check. An application submitted without a fingerprint card, if required by law, is deficient.
- (1) The applicant shall provide a readable and complete fingerprint card. The applicant shall pay any costs attributable to the original fingerprinting or subsequent re-fingerprinting due to unreadable fingerprints and any fees required for the submission or resubmission of fingerprints.

- (2) If after two attempts, the FBI determines the fingerprints provided are not readable, the applicant shall submit a written statement, under oath, the applicant has not been arrested, charged, indicted, convicted of or pled guilty to any felony or misdemeanor, other than as disclosed on the application.
  - (3) Division staff shall submit completed applicant fingerprint cards and the applicable fees to the Arizona Department of Public Safety, pursuant to A.R.S. § 41-1750, Public Law 92-544 and subsection (D)(4)(b)(1).
- e. Initial Training. If required by the applicable section of the ACJA, an applicant shall attend and complete the initial training session. Division staff shall provide the applicant with a document signifying the applicant completed the training. If required by the applicable section of the ACJA, an applicant shall attend the entire training session for eligibility to sit for a certification examination.
- f. Examination. If required by the applicable section of the ACJA, an applicant shall take and pass the examination for initial certification. Specific examination requirements are located in subsection (E) of the applicable ACJA section. National examinations shall be at the time and place scheduled by the administering entity.
- (1) Administration of the Initial Examination. In administering the examination, division staff shall:
  - (a) Offer the examination on dates in conjunction with the initial training for certification, if initial training is required by the applicable section of the ACJA;
  - (b) Set a date and place for the examination;
  - (c) Promptly notify qualified applicants in writing they are permitted to sit for the examination, specifying the time and place of such examination;
  - (d) Publish in advance of the examination, content specifications for the examination and a study guide, as approved by the applicable board and make the specifications and study guide available to applicants;
  - (e) Announce, in advance of the examination, the passing score for the examination, as established by the applicable board. The passing score shall be consistent with the job analysis conducted at the direction of the board. An applicant shall pass with a final score on the examination meeting the guidelines established by the board;
  - (f) Use multiple versions of the examination and ensure no copies of the examination are released to applicants or the public;
  - (g) Inform each applicant in writing as to whether the applicant passed or failed the examination and if the grade is failing, a reexamination is required to meet all qualifications for certification; and
  - (h) Make and keep an accurate record of each examination used at each administration of the examination and the score of each person taking the examination.
- (2) Administration of Reexaminations. Division staff shall allow an applicant who fails the first examination to:
  - (a) Review the answer sheet and grade of the applicant, upon written

request. The applicant shall conduct the review during business hours in the presence of division staff and the applicant shall not copy materials provided for review.

- (b) Retake the examination two times under the following conditions:
  - (i) The applicant is not otherwise disqualified from retaking the examination;
  - (ii) The applicant sent a written request to retake the examination to division staff within 30 days of the date of the notice of the examination results;
  - (iii) The applicant files a new application and pays the applicable examination fee each time;
  - (iv) The applicant takes the second or third reexamination within 90 days of the date of the notice of the examination results indicating the applicant failed either the first or second examination; and
  - (v) An applicant who does not submit a written request to retake the examination within the 30 day time frame specified in subsection (E)(1)(f)(2)(b)(ii), may request an extension of time from the board upon a showing of good cause.
- (c) An applicant taking and failing the examination three times, unless otherwise noted in the applicable ACJA section, shall not be permitted to take any subsequent examination unless granted permission by the board.
- (d) Subsequent Examinations.
  - (i) Any applicant who was unsuccessful on the third attempt to pass the examination may request the board for permission to sit for a fourth examination. The applicant shall submit a written request to the board to sit for a fourth examination under the following conditions:
    - a) The applicant has filed a new application with division staff and paid the appropriate examination fee;
    - b) The applicant is not otherwise disqualified from taking the subsequent examination;
    - c) The applicant has provided documentation attached to the new application stating the additional study and preparation the applicant has made to qualify for a fourth examination; and
    - d) The applicant has provided documentation attached to the new application demonstrating the circumstances and reasons for believing the applicant now possesses the knowledge of the minimum competencies of the profession or occupation to pass the fourth examination.
  - (ii) If the board finds the applicant demonstrates additional study and preparation and the circumstances and reasons to believe the applicant now possesses the knowledge of the minimum competencies of the profession or occupation, the board may, pursuant to subsection (D)(5)(c)(1)(c ), approve the applicant's request to sit for the fourth examination. Division staff shall inform the applicant of the board's decision to allow the applicant to sit for the fourth examination within ten days of the board's decision. The notice shall state the earliest date for which the applicant may sit for the

fourth examination.

- (iii) If the board finds the applicant does not demonstrate additional study and preparation and the circumstances and reasons to believe the applicant now possesses the knowledge of the minimum competencies of the profession or occupation, the board shall, pursuant to subsection (D)(5)(c)(1)(c), deny the applicant's request to sit for the fourth examination. Division staff shall inform the applicant of the board's decision to deny the applicant's request to sit for the fourth examination within ten days of the board's decision. The notice shall state the reasons for the board's denial. The decision by the board to deny the request is final and there is no right to a hearing.
  - (iv) If the applicant's request to sit for the fourth examination is denied, the applicant may file a new application twelve months after the board's decision to deny.
  - (v) An applicant who was unsuccessful on the fourth or any subsequent examinations may request permission from the board to sit for a subsequent examination pursuant to subsection (E)(1)(f)(2)(d).
- g. An applicant is disqualified from taking any future examination if the board determines the applicant engaged in fraud, dishonesty or corruption while taking the examination or any subsequent examination.
- h. Updating of Examinations. Division staff shall update examinations as needed and may ask representatives from the court community, regulated profession or occupation, the public, or any other knowledgeable resource to assist in the development and validation of examinations for the applicable sections of the ACJA.

## 2. Decision Regarding Certification.

- a. Notification of Certification. Upon the board's decision to issue a certificate, division staff shall promptly notify qualified applicants of certification in writing, pursuant to this section and the applicable section of the ACJA. Each qualified applicant shall receive a document, badge or card evidencing certification, stating the applicant's name, date of certification, certificate number and expiration date of the certification. Each certificate shall expire as provided in the applicable section of the ACJA. In addition, unless previously provided, each applicant granted certification shall receive a copy of this section and the applicable section of the ACJA, detailing the responsibilities of the certificate holder.
- b. Certificate Status. All certificates are valid until expired, surrendered, suspended or revoked.
- c. Denial of Initial Certification.

- (1) The board shall deny certification of the applicant if the applicant does not meet the qualifications or eligibility requirements at the time of the



application described in this section or the applicable section of the ACJA; or has not submitted a complete application with all deficiencies corrected, the applicable documents and fees.

(2) The board may deny certification of any applicant if one or more of the following is found:

- (a) Material misrepresentation, omission, fraud, dishonesty, or corruption on the part of the applicant in the examination for certification;
- (b) The applicant or an officer, director, partner, member, trustee, or manager of the applicant:
  - (i) Has committed material misrepresentation, omission, fraud, dishonesty, or corruption in the application form;
  - (ii) Has committed any act constituting material misrepresentation, omission, fraud, dishonesty or corruption in business or financial matters;
  - (iii) Has conduct showing the applicant or an officer, director, partner, member, trustee, or manager of the applicant is incompetent or a source of injury and loss to the public;
  - (iv) Has a conviction by final judgment of a felony, regardless of whether civil rights have been restored;
  - (v) Has a conviction by final judgment of a misdemeanor if the crime has a reasonable relationship to the practice of the certified profession or occupation, regardless of whether civil rights have been restored;
  - (vi) Has a denial, revocation, suspension or any disciplinary action of any professional or occupational license or certificate;
  - (vii) Has a censure, probation or any other disciplinary action of any professional or occupational license or certificate by other licensing or regulatory entities if the underlying conduct is relevant to the certification sought;
  - (viii) Has a termination, suspension, probation or any other disciplinary action regarding past employment if the underlying conduct is relevant to the certification sought;
  - (ix) Has been found civilly liable in an action involving misrepresentation, material omission, fraud, misappropriation, theft or conversion;
  - (x) Is currently on probation or parole;
  - (xi) Has violated any decision, order, or rule issued by a professional regulatory entity;
  - (xii) Has violated any order of a court, judicial officer, administrative tribunal, or the board;
  - (xiii) Has made a false or misleading statement or verification in support of an application for a certificate filed by another person;
  - (xiv) Has made a false or misleading oral or written statement to division staff or the board;
  - (xv) Failed to disclose information on the certification application subsequently revealed through the background check;
  - (xvi) Failed to respond or furnish information to division staff or the board when the information is legally requested and is in the applicant's control or is reasonably available to the applicant and pertains to certification or investigative inquiries; or
  - (xvii) If the applicant is a business, a record of conduct constituting

dishonesty or fraud on the part of an employee, board member, or the business.

- (3) The board may consider any or all of the following criteria when reviewing the application for certification of an applicant with a misdemeanor or felony conviction, pursuant to subsection (E)(2)(c)(2)(b)(iv) and (v):
  - (a) The applicant's age at the time of the conviction;
  - (b) The applicant's experience and general level of sophistication at the time of the pertinent conduct and conviction;
  - (c) The degree of violence, injury or property damage and the cumulative effect of the conduct;
  - (d) The applicant's level of disregard of ethical or professional obligations;
  - (e) The reliability of the information regarding the conduct;
  - (f) If the offenses involved fraud, deceit or dishonesty on the part of the applicant resulting in harm to others;
  - (g) The recency of the conviction;
  - (h) Any evidence of rehabilitation or positive social contributions since the conviction occurred as offered by the applicant;
  - (i) The relationship of the conviction to the purpose of certification;
  - (j) The relationship of the conviction to the applicant's field of certification;
  - (k) The applicant's candor during the application process;
  - (l) The significance of any omissions or misrepresentation during the application process; and
  - (m) The applicant's overall qualifications for certification separate from the conviction.
- (4) Upon the board's decision to deny certification, division staff shall, notify each applicant denied certification of the reasons for the denial and the right of the applicant to a hearing, pursuant to subsection (E)(2)(c)(5). Division staff shall provide the notice in writing and shall send the notice within ten days after the board's decision.
- (5) An applicant is entitled to a hearing on the decision to deny certification, if the disciplinary clerk receives a written request for a hearing within fifteen days after division staff mails the notice of the denial. The applicant is the moving party at the hearing and has the burden of proof. The provisions of subsections (H)(12) through (H)(23) and (H)(25) through (H)(27) apply regarding procedures for the hearing and appeal.
- (6) An applicant denied certification by a final decision of the board, whether or not a hearing was requested and held, may reapply for certification, pursuant to subsection (E), under the following circumstances:
  - (a) It has been twelve months since the final decision by the board;
  - (b) If the initial reasons for denial were failure to meet the education and experience requirements, the applicant shall attach to the new application written documentation demonstrating how the circumstances have changed to meet these requirements:
    - (i) Division staff shall review the new application and supporting documentation and consider if the applicant now meets the education and experience requirements;
    - (ii) Division staff shall notify the applicant in writing within ten days if the applicant has now provided sufficient documentation to demonstrate the applicant meets the education and experience requirements pursuant to this section and the applicable ACJA

sections or has not provided sufficient documentation to demonstrate the applicant now meets the education and experience requirements;

- (iii) If the applicant has met the education and experience requirements necessary for certification, division staff shall forward the application to the board pursuant to subsection (E)(1)(a)(7);
  - (iv) If the applicant has not met the education and experience requirements necessary for certification, division staff shall forward the application to the board noting the deficiencies and a recommendation for denial pursuant to subsection (E)(1)(a)(9) and provide written notice to the applicant of the deficiencies and recommendation; and
  - (v) The applicant may request an informal interview with the board to review the recommendation of division staff for denial of certification because of the deficiencies, if the request is submitted to the board in writing within ten days of the date of the notification.
- (c) If the board denied certification for reasons other than failure to meet the education or experience requirements, the applicant shall present new documentation to address the original issues resulting in denial including all of the following:
- (i) Demonstration of acceptance of responsibility for the conduct leading to the denial by the board; and
  - (ii) Establishment of good moral character.
- (d) In determining whether the applicant has established good moral character, the board shall conduct an informal interview with the applicant, no later than 60 days after the applicant has submitted a completed application.
- (e) Upon a showing of good cause, the applicant may apply for certification sooner than twelve months if denied solely for lack of education or experience necessary for certification, if those circumstances have changed.
- (f) The applicant may not reapply for certification if there are statutory provisions prohibiting certification as specified in the applicable ACJA section.

### 3. Time Frames for Certification.

- a. The director shall develop time frames for the processing of certification applications by division staff, pursuant to subsection (D)(2)(a)(7).
- b. An applicant shall respond timely to requests for information from division staff pertaining to the applicant's application. Unless the applicant can show good cause as to why the board should grant additional time, the board shall not approve any applicant for certification unless the applicant successfully completes all requirements within 90 days from the date division staff received the original initial application for certification or within 90 days of the applicant passing the examination for certification if required by the applicable section of the ACJA.

- c. If an applicant needs additional time to comply with division staff requests or to complete the application process within the time frames specified in this subsection, the applicant shall file a written request for an extension with division staff. The request shall state the reasons for additional time to comply with time frames and certification requirements. The applicant shall file the request for additional time to complete the initial application at a minimum, ten days prior to the 90 day deadline, unless the applicant makes a showing of good cause. Failure to complete the certification process or file a written request for an extension of time within this time period shall nullify and void the original application and supporting documents, including fingerprints, fees and the applicable examination scores.
  - d. Division staff shall forward the written request for an extension of time to the board at the next scheduled board meeting.
  - e. If the applicant fails to meet the 90 day deadline or is not granted additional time by the board to complete the initial certification process, the applicant is considered a new applicant. The applicant shall submit a new application including a fingerprint card and fee if applicable and certification and training fees. The applicant is not required to sit for the examination if the applicant submits the new application within one year of having successfully passed the required examination.
4. Records of Applicants for Certification and Certificate Holders. Unless otherwise provided by law, the following applies to applicant and certificate holder records:
- a. Applicant and certificate holder's certification records are open to the public, after home addresses, home or cellular telephone numbers, social security numbers and all other personally identifying information, except for the name of the certificate holder, have been redacted.
  - b. Division staff shall retain applicant and certificate holder records for a period of five years from the last activity in the record. Division staff shall take appropriate methods to ensure the confidentiality of any destroyed records.
  - c. If an applicant or certificate holder needs to have personally identifying information contained in their files released to an employer or potential employer, the applicant or certificate holder shall sign a release of information form. Division staff shall provide the applicant or certificate holder with an approved form for this purpose.
5. Unlawful Use of Designation or Abbreviation. A person who has received a certificate to practice in a specific profession or occupation from the board is authorized to utilize the designation of "Arizona certified" in connection with their title or name and may use any appropriate abbreviation connected with this certification. No other person or business shall assume or use the title, designation or abbreviation or any other title, designation, sign or card, the use of which is reasonably likely to induce others to believe the person or business holds valid certification issued by the Arizona Supreme Court in the specified profession or occupation. The certificate holder shall not sell, transfer or assign its certification to any other entity.

6. Cease and Desist Order. The board, upon completion of an investigation or disciplinary proceeding, may issue a cease and desist order pursuant to subsection (H)(24)(a)(6)(g). A hearing officer or a superior court judge, upon petition by the board, may enter an order for an individual or business entity to immediately cease and desist conduct constituting engagement in the practice of the profession or occupation without the required certification.
7. Voluntary Surrender. A certificate holder in good standing may surrender their certificate to the board. However, the surrender of the certificate is not valid until accepted by the board. The board or division staff may require additional information reasonably necessary to determine if the certificate holder has violated any provision of the statutes, court rules and this section or the applicable section of the ACJA. The surrender does not prevent the commencement of subsequent discipline proceedings for any conduct of the surrendered certificate holder occurring prior to the surrender.
  - a. Division staff shall present the surrendered certificate to the board at the next available board meeting after receiving the surrender. Upon the board's acceptance of the voluntary surrender division staff shall designate the certificate of the certificate holder as a "surrendered certificate holder in good standing". Division staff shall notify the certificate holder in writing within ten days after the board's acceptance of the surrender.
  - b. The board shall not accept the surrender if there is a complaint pending against the certificate holder. However, this does not preclude the board from entering into a consent agreement to resolve the pending complaint pursuant to subsection (H)(24)(a)(6)(c) by terms including the voluntary surrender of the certificate.
  - c. The board shall, within 120 days of the receipt of the surrendered certificate by division staff either accept the surrender or, based upon the recommendations of division staff, institute disciplinary proceedings pursuant to subsection (H). If the board subsequently imposes a sanction pursuant to subsections (H)(24) and (H)(25) upon the certificate of the surrendered certificate holder, division staff shall change the status of the certificate holder from "surrendered certificate holder in good standing" to that of a person so disciplined.
8. Inactive Status.
  - a. A certificate holder may transfer to inactive status, upon written request to the board. Upon recommendation of division staff the board may accept the transfer of the certificate holder to inactive status and division staff shall note in the certification database the certificate holder is on inactive status, in good standing. The inactive certificate holder shall not engage in the practice of the profession or occupation of certification pro bono or for a fee or other compensation while on inactive status and shall not present themselves as a certificate holder.

- b. Upon application and payment of any applicable fee for reactivation of certification, required by the applicable section of the ACJA, the board may require the applicant to comply with the following:
    - (1) Submit proof of compliance with the requirements for continuing education;
    - (2) Submit other proof required by the board to:
      - (a) Demonstrate the applicant possesses the skills necessary to practice in the profession or occupation;
      - (b) Demonstrate the applicant remains in compliance with the applicable ACJA sections; and
      - (c) Demonstrate compliance with other requirements for certification.
    - (3) If the applicant for reinstatement engaged in the profession or occupation in another jurisdiction during the time the certificate holder's certificate was inactive, the applicant shall submit all of the following:
      - (a) Proof of practice in the profession or occupation in the other jurisdiction;
      - (b) An affidavit affirming the applicant has not been disciplined in another jurisdiction; and
      - (c) An affidavit affirming the applicant is not subject to discipline or being investigated in another jurisdiction.
    - (4) If the applicant has been inactive for more than one year the board may require the applicant to sit for and pass the applicable examination.
  - c. If the applicant meets the requirements of this subsection to the satisfaction of the board, the board shall return the inactive certificate holder to active status. Division staff shall  
23. change the status of the certificate holder from "inactive" to "active" and notify the certificate holder of the board's decision within ten days.
  - d. A certificate holder shall only remain in an inactive status as specified by the applicable ACJA section.
9. Reinstatement after Suspension or Revocation. A certificate holder whose certificate was suspended or revoked by a final order of the board may apply for reinstatement under the following conditions:
- a. An applicant for reinstatement shall file a written application for reinstatement with division staff, accompanied by the appropriate fees and the following documents:
    - (1) The reinstatement form and a copy of the final order of suspension or revocation;
    - (2) A detailed description of the applicant's occupation and sources of income or earnings derived during the period between the filing of the final order by the disciplinary clerk and the date of application for reinstatement after suspension or an initial application for recertification;
    - (3) A statement of every civil or criminal action and a copy of the action, where the applicant was either plaintiff or defendant, since the submission

- of the last renewal application or, if no renewal application has been submitted, then since the initial application was submitted;
- (4) A list of all criminal or civil final judgments since the submission of the last renewal application, or if no renewal application has been submitted, then since the initial application was submitted;
  - (5) A list of all residences and business addresses since the submission of the last renewal application, or if no renewal application has been submitted, then since the initial application for certification and the date division staff receive the application for reinstatement;
  - (6) A statement of concise facts of how the applicant for reinstatement has maintained the minimum competencies and knowledge during the period of time from the date of the suspension order until the date division staff receives the reinstatement application;
  - (7) A statement of concise facts of how the applicant for recertification has maintained the minimum competencies and knowledge during the period of time from the date of the order revoking the applicant's certificate until the date division staff receive the application for certification;
  - (8) A statement of facts supporting reinstatement to the profession or occupation after suspension; or a statement of facts supporting certification again to the profession or occupation; and
  - (9) A statement of all facts demonstrating the applicant's rehabilitation during the period of time from the date of the board's order revoking the applicant's certificate or suspending the applicant's certificate, until the date division staff receive the application for reinstatement or initial certification.
- b. Division staff or the board may require additional information demonstrating the applicant meets the minimum competencies of the profession or occupation. The board may require the applicant sit for and pass the applicable examination in order to process the application or determine if the applicant meets the minimum competencies of the profession or occupation. The applicant has the burden of proof to demonstrate by clear and convincing evidence the applicant's rehabilitation, compliance with all discipline orders and rules and, the applicant meets the minimum competencies of the profession or occupation. An applicant denied reinstatement by the board has the right to a hearing pursuant to subsection (H)(12), except if the applicant fails to provide the information within the requested time frame. Failure to provide the information shall result in automatic denial of reinstatement without the right to a hearing.
- c. Upon submission of all requirements of subsection (E)(9)(a), the applicant shall meet all requirements of initial certification pursuant to subsection (E)(1). The applicant, for reinstatement after a suspension or revocation, shall pay the fee for reinstatement, pursuant to subsection (K) in the applicable section of the ACJA.
- d. The board shall not issue any certification under this section to any person or business entity whose certification has been suspended until:
- (1) The person or business entity seeking reinstatement of a suspended certificate has demonstrated all the requirements of the suspension order

- have been met; and
  - (2) The person or business entity qualifies in accordance with the applicable provisions of this section or other sections of the ACJA.
- e. The board shall not issue any certification under this section to any person or business entity whose certification has been revoked until:
- (1) One year has passed from the date of the board's final order of revocation;
  - (2) The person or business entity seeking certification provides proof of satisfaction of any and all requirements in the order of revocation; and
  - (3) The person or business entity again qualifies in accordance with the provisions of subsection (E)(1) and the applicable sections of the ACJA.

## **ACJA 7-201 (F) – Role and Responsibilities of Certificate Holders**

### **F. Role and Responsibilities of Certificate Holders.**

1. Code of Conduct. Each individual certificate holder shall adhere to the code of conduct or standards of conduct, subsection (J) in the applicable section of the ACJA.
2. Identification. Upon request by any judicial officer, court employee or member of the public, a certificate holder shall provide proof of certification.
3. Assumed Business Name. A certificate holder shall not transact business in this state under an assumed name or under any designation, name or style, corporate or otherwise, other than the legal name of the individual or business entity unless the person or business entity files with division staff a statement indicating the name for transaction of the business and the legal full name of the certificate holder.
4. Response. A certificate holder shall respond by the specific time stated in any request for information from, and shall provide documents to the director, deputy director, division staff, or board pertaining to certification, renewal of certification, complaints alleging acts of misconduct or violations by the certificate holder, investigative inquiries and compliance audits or defensive driving course monitorings of the practice of the certificate holder. A certificate holder shall respond to any subpoenas or orders issued by the director, division director, board, or any judicial officer. Failure to comply with this subsection by a certificate holder constitutes grounds for discipline pursuant to subsection (H)(6)(c) or denial of renewal of certification pursuant to subsection (G)(3) and (G)(4). Failure to comply with this subsection by a certificate holder in completion of a corrective action plan or defensive driving course monitoring may constitute grounds for discipline, pursuant to subsection (H)(6)(b).
5. Candor.
  - a. A certificate holder shall not knowingly:



- (1) Make a false statement of material fact or law to a tribunal; or
  - (2) Fail to disclose a material fact to a tribunal, except as required by applicable law.
- b. A certificate holder shall notify division staff within ten days of a misdemeanor or felony conviction.
- 6. Change of Name or Address. A certificate holder shall notify division staff of any change in name or business, directory, mailing or home address, telephone number or email address within 30 days of any change, pursuant to the applicable sections of the ACJA. The certificate holder shall make this notice in writing by U.S. Post, facsimile or email.

## **ACJA 7-201 (G) – Renewal of Certification**

### **G. Renewal of Certification.**

- 1. Expiration Date. Certificates expire on the date specified by the applicable section of the ACJA. All certificates shall continue in force until expired, voluntarily surrendered, placed on inactive status, suspended or revoked.
  - a. When a certificate holder has filed a timely and complete application for the renewal of certification, the existing certification does not expire until the administrative process for review of the renewal application has been completed.
  - b. The board may request an informal interview with the applicant for renewal, pursuant to subsection (D)(5)(c)(2)(b), to establish if additional information or an explanation of the information provided by the applicant is needed to determine if the applicant continues to meet the qualifications for certification in this section and the applicable section of the ACJA.
  - c. If the renewal application is denied, the existing certification does not expire until the last day for seeking a hearing on the decision to deny, pursuant to subsection (E)(2)(c)(5); or if a hearing is requested, until the final decision is made by the board pursuant to subsection (H)(25).
  - d. The certificate of a certificate holder who does not supply a complete renewal application and payment of the renewal fee in the specified time and manner to division staff shall expire as of the expiration date in the applicable section of the ACJA. Division staff shall treat any renewal application received after the expiration date as a new application.
- 2. Application. A certificate holder is responsible for applying for a renewal certificate. The certificate holder shall apply for renewal of certification on the form provided by division staff. The board shall set a deadline renewal application date, in advance of the expiration date, to allow a reasonable time frame for processing the renewal application.

3. Additional Information. Before recommending renewal of certification, division staff may require additional information reasonably necessary to determine if the applicant continues to meet the qualifications specified in this section, which may include:
  - a. Background information, pursuant to subsection (E)(1)(a) and the applicable section of the ACJA;
  - b. A personal credit review and review of records pertaining to the applicant by division staff, pursuant to subsection (E)(1)(a)(5); and
  - c. Fingerprinting pursuant to subsection (E)(1)(d).

#### 4. Decision Regarding Renewal.

- a. The board may renew a certification if the certificate holder:
  - (1) Meets all requirements for renewal as specified in this section and the applicable section of the ACJA;
  - (2) Submits a completed renewal application; and
  - (3) Pays the renewal fees on or before the expiration date as specified by the applicable section of the ACJA.
- b. Division staff shall promptly notify the applicant in writing of the board's decision to renew the applicant's certificate in accordance with this section and the applicable section of the ACJA. Each renewed applicant shall receive a document, badge or card evidencing renewal of certification, stating the applicant's name, date of certification, certification number and expiration date.
- c. The board may deny renewal of certification for any of the reasons stated in subsection (E)(2)(c). Division staff shall promptly notify the applicant, in writing, within ten days of the board's decision to deny renewal of certification. The notice shall include the board's reasons for the denial of renewal of certification and the right of the applicant to a hearing, pursuant to subsection (G)(4)(d).
- d. An applicant is entitled to a hearing, on the decision to deny renewal of certification if the disciplinary clerk receives a written request for a hearing within fifteen days after the date of the notice of denial. The applicant is the moving party at the hearing and has the burden of proof. The provisions of subsections (H)(12) through (H)(23) and (H)(25) through (H)(27) apply regarding procedures for hearing and appeal.

### **ACJA 7-201 (H) – Complaints, Investigations, Disciplinary Actions, Proceedings and Certification and Disciplinary Hearings**

#### **H. Complaints, Investigations, Disciplinary Actions, Proceedings and Certification and Disciplinary Hearings.**

## 1. Complaints. Filing and General Provisions.

- a. Filing of complaint. All judicial officers, court employees and certificate holders shall, and any person may, notify division staff if it appears a certificate holder has violated statutes, court rules, this section or the applicable section of the ACJA. The complainant shall provide the complaint in writing with sufficient specificity to warrant further investigation. The complaint form shall provide the name, telephone number and address of the complainant.
- b. Director initiated complaints. In accordance with the policies and procedures developed pursuant to subsections (D)(2)(a)(6) and (D)(2)(b)(2), the director may direct division staff to investigate allegations of acts of misconduct or violations of statutes, court rules, or the ACJA, which may result in a complaint, if such investigation protects and serves the best interest of the public. This shall include an investigation where the complainant does not wish to have their identity disclosed to the certificate holder.
  - (1) Review of allegations. Division staff shall:
    - (a) Review the allegations and determine if the supreme court has jurisdiction;
    - (b) Determine if there is sufficient information to permit investigation;
    - (c) Verify details in the allegations including the certificate holder's status and, if available, any addresses, phone numbers or other relevant factors;
    - (d) Corroborate, by independent observations and information, the allegations of acts of misconduct or violations of statutes, court rules or the ACJA, to determine if the allegations are credible and reliable; and
    - (e) Meet with the division director to confirm jurisdiction and relevant factors contained in the allegations.
  - (2) Division staff shall, upon completion of the review, prepare a written report of the allegations and include the following:
    - (a) Confirmation of supreme court jurisdiction;
    - (b) Determination, if the allegations are true, they would warrant discipline;
    - (c) Verification of details in the allegations; and
    - (d) Corroboration of relevant facts by independent observations.
  - (3) Division staff shall forward the written report to the director for review and schedule a meeting with the director and division director.
  - (4) The director shall review the written report and direct staff to:
    - (a) Conduct further review of the allegations;
    - (b) Initiate a complaint naming the director as the complainant, pursuant to subsection (D)(2)(b)(3); or
    - (c) Determine the allegations do not warrant the filing of a director initiated complaint.
- c. Anonymous complaints. Division staff shall not accept anonymous complaints.

- d. Authority after expiration. If a complaint or investigation is pending prior to the expiration date of a certificate, the provisions of subsection (G)(1) and the applicable sections of the ACJA do not affect the authority of:
- (1) The director to initiate a complaint, pursuant to subsection (D)(2)(b)(3);
  - (2) Division staff to investigate a complaint, pursuant to subsection (D)(4)(b)(5); or
  - (3) The board to take disciplinary action regarding the certification of a certificate holder, pursuant to subsection (D)(5)(c)(1)(g).
- e. Standing of Complainant. A complainant does not have standing regarding any proceedings and is not a party to any proceedings. The complainant may, upon request to division staff, receive notice of any public proceeding concerning the complaint or any consent agreements. The complainant submits to the jurisdiction of the supreme court's certification and licensing division for all purposes relating to the proceedings.
- (1) The complainant shall keep division staff informed of any changes of mailing address, telephone number or email address during the investigation and any disciplinary proceedings.
  - (2) Division staff shall forward any correspondence or notice to the complainant by United States mail to the last address of record with division staff.
  - (3) Division staff shall provide the complainant with the following information:
    - (a) A written acknowledgement of the receipt of the complaint;
    - (b) A copy of the letter sent to the certificate holder requiring a response to the alleged acts of misconduct or violations and the initial response by the certificate holder, within twenty days of receipt of the certificate holder's initial response;
    - (c) Notice, if the complainant has requested notice of any public proceeding concerning the complaint or any consent agreement;
    - (d) Notice of the final disposition of each allegation; and
    - (e) Notice of the dismissal of the complaint within ten days of the determination by the division director, if applicable, pursuant to subsection (H)(2)(b).
  - (4) Failure by division staff to provide the complainant with information as required by this subsection shall not affect the ultimate disposition of any allegations of acts of misconduct or violations by the certificate holder.
  - (5) The complainant may file a request for review by the board of the division director's dismissal of the complaint, within ten days of the date of the notice of dismissal pursuant to subsection (H)(2)(e).
- f. Non-abatement. Unwillingness, failure of the complainant to cooperate with division staff or the board, withdrawal of the complaint or a specific allegation of misconduct or violation contained in the complaint, settlement or compromise between the complainant and the certificate holder, or restitution by the certificate holder shall not abate the processing of any complaint or disciplinary proceeding.
- g. Confidentiality of Complaints. The director, deputy director, division staff, board and court employees shall keep information or documents obtained or

generated by the director, deputy director, division staff, board or court employees in the course of an open investigation or received in an initial report of misconduct confidential, except as mandated by court rules or this section.

- (1) Confidential information may also be disclosed during the course of an open investigation:
    - (a) To court staff, the attorney general, county attorney, law enforcement and other regulatory officials;
    - (b) If the director makes a finding the disclosure is in the best interest of the public and the interest is not outweighed by any other interests; or
    - (c) Is not contrary to law.
  - (2) Once a finding of probable cause has been entered all information and documents are open for public inspection unless:
    - (a) Confidential by law or public record rules adopted by the supreme court; or
    - (b) If the deputy director, as probable cause evaluator, determines further investigation is necessary, the information or documents and those compiled in the further investigation shall remain confidential until probable cause is determined.
  - (3) Complaints dismissed by the division director, pursuant to subsection (H)(2)(b) for lack of jurisdiction or clear insufficiency are confidential and not a matter of public record for inspection.
  - (4) Complaints dismissed by the board, pursuant to subsection (H)(24)(a)(3) are a matter of public record for inspection.
- h. Investigative Subpoenas. Upon the recommendation of division staff and a demonstration of good cause, the division director, pursuant to subsection (D)(4)(a)(1), may issue an investigative subpoena to any person or entity:
- (1) For the purpose of securing documents or information from any person or entity, if the documents or information are related to a pending investigation of alleged acts of misconduct or violations regarding statutes, court rules, this section or the applicable section of the ACJA.
  - (2) Subpoenas issued by the division director shall be issued and served in the same manner as provided by the Arizona Rules of Civil Procedure. An employee of the court or any other person as designated by the Arizona Rules of Civil Procedure may serve the subpoena.
- i. Processing Time Frames. Division staff shall:
- (1) Prepare any complaint the division director has dismissed pursuant to subsections (H)(2)(b) and (c) and forward the complaint to the board for review, pursuant to subsection (H)(2)(d), at the next regularly scheduled board meeting.
  - (2) Prepare and forward to the board for review at the next regularly scheduled board meeting, any investigated complaint the deputy director has reviewed and entered a finding regarding probable cause, pursuant to subsection (H)(5)(c).
  - (3) Prepare the documents for informal discipline no later than 30 days

following the order of the board, pursuant to subsections (H)(7)(b) and (H)(25), unless the board extends the time for good cause.

- (4) Prepare the documents for formal discipline no later than 30 days following the order of the board pursuant to subsections (H)(9)(b) and (H)(25), unless the board extends the time for good cause.
- (5) File the formal statement of charges with the disciplinary clerk and arrange for service no later than 30 days following the order of the board, pursuant to subsection (H)(10), unless the board extends the time for good cause.
- (6) Serve the board's order of emergency summary suspension and expedited hearing immediately on the certificate holder, pursuant to subsection (H)(9)(d)(2).
- (7) Except as provided in subsections (H)(1)(i)(6) and (8), deposit in the United States mail addressed to the last known address on file with division staff, written notice of the board's final decision and order, regarding a complaint matter, to the certificate holder and complainant within ten days after the board's decision, pursuant to subsection (H)(26)(b) and (c). Notice by mail is complete upon deposit in the United States mail.
- (8) Mail the board's final order of suspension or revocation of the certificate, pursuant to subsection (H)(26)(b) to the certificate holder, by certified mail return receipt requested, within two days, after the board's decision, addressed to the last known address on file with division staff; and
- (9) Process complaints timely, with the goal of processing 98 percent of all complaints within 22 months from date of receipt to final decision by the board.

## 2. Initial Screening of a Complaint. Upon receipt of a complaint:

### a. Division staff shall:

- (1) Consider if a complaint:
  - (a) Falls outside the supreme court's jurisdiction;
  - (b) Does not provide the name of a certificate holder;
  - (c) Does not contain sufficient information to permit an investigation;
  - (d) Does not provide specific allegations of acts of misconduct or violations of the statutes, court rules, this section or the applicable section of the ACJA;
  - (e) Contains allegations of acts of misconduct or violations, that if true, would not constitute a violation of the statutes, court rule, this section or the applicable section of the ACJA, the certificate holder is required to comply with;
  - (f) Does not provide the name of the complainant; or
  - (g) Does warrant further investigation and evaluation.
- (2) Recommend the division director dismiss the complaint if the complaint:
  - (a) Falls outside the jurisdiction of the supreme court, court rules, this section, the applicable section of the ACJA, or the laws applicable to the certificate holder;
  - (b) Does not provide the name of a certificate holder;
  - (c) Does not contain sufficient information to permit an investigation;

- (d) Does not provide specific allegations of acts of misconduct or violations of the statutes, court rules, this section or the applicable section of the ACJA;
  - (e) Contains allegations of acts of misconduct or violations that if true, would not constitute a violation of the statutes, court rules, this section or the applicable section the certificate holder is required to comply with; or
  - (f) Does not provide the name of the complainant.
- (3) Report all complaints dismissed by the division director to the board at the next regularly scheduled board meeting following the determination by the division director; and
  - (4) Provide written notice to the complainant and the certificate holder of the division director's decision to dismiss the complaint for the reasons in subsection (H)(2)(b) and (c), within ten days of the division director's decision.

b. The division director may:

- (1) Direct division staff to return an incomplete complaint to the complainant for additional information;
- (2) Dismiss a complaint, pursuant to subsection (D)(4)(a)(2), with or without prejudice, if the complaint falls outside the jurisdiction of the supreme court, the statutes, court rules, this section or the applicable section of the ACJA;
- (3) Dismiss a complaint, pursuant to subsection (D)(4)(a)(3), with or without prejudice, if the complaint meets any of the criteria of subsection (H)(2)(a)(2)(b) through (f); or
- (4) Refer the complaint to another state agency or entity with jurisdiction, if appropriate, pursuant to subsection (D)(4)(a)(4).

c. The division director shall dismiss the complaint, if the complainant does not supply documents or other information to remedy an insufficient complaint or demonstrate the alleged acts of misconduct or violations are within the certificate holder's responsibilities as required by statutes, court rules, this section or the applicable section of ACJA.

d. The board shall review, pursuant to subsection (D)(5)(c)(1)(e), the division director's dismissal of a complaint and do one of the following:

- (1) Affirm the division director's dismissal; or
- (2) Request additional investigation of the dismissed complaint; pursuant to subsection (D)(5)(c)(2)(c).

e. The complainant may request the board review the division director's dismissal of the complaint pursuant to subsection (H)(2)(b) or (c) by submitting a written request for review, specifying the requested reasons for the board's review. The complainant shall submit the request for review to division staff within ten days of the written notice of the division director's dismissal of the complaint.

3. Investigation. Division staff shall investigate the complaint, after completion of

the initial screening of the complaint and the determination a complaint is within the jurisdiction of the supreme court and warrants further investigation pursuant to subsection (H)(2)(a)(1)(g).

- a. Preliminary Investigation. Division staff shall conduct an investigation of all complaints not dismissed by the division director to determine if a certificate holder has violated statutes, court rules, this section, or the applicable section of the ACJA; or for the purpose of securing information useful in the lawful administration of the law, this section, or the applicable sections of the ACJA.
- b. Notification to Certificate Holder of Complaint. Division staff shall send the complaint to the certificate holder within fifteen days of receiving the complaint or the date the director initiates a complaint pursuant to subsections (D)(2)(b)(3) and (H)(1)(b)(4)(b).
- c. Certificate Holder's Response to Notification of Complaint. The certificate holder shall provide a written response to the complaint within thirty days of the notification of the complaint. The board shall not proceed with disciplinary action without providing the certificate holder the complaint and an opportunity to respond to the complaint, except in a matter regarding an emergency suspension pursuant to subsection (H)(9)(d). Failure by the certificate holder to accept notification of a complaint or failure to respond to the complaint shall not prevent division staff from proceeding with an investigation and the board from taking any disciplinary action.
  - (1) If the certificate holder is unable to respond to a complaint within the time frame established by subsection (H)(3)(c), the certificate holder may submit a written request to the division director for an extension of time to respond. The request for an extension of time to respond shall demonstrate good cause exists for an extension and shall provide a proposed date for fulfillment of the response requirement. The certificate holder shall file the written request for an extension of time to respond to the complaint, no later than five days prior to the date the response is due.
  - (2) The division director shall determine if good cause exists for an extension. Division staff shall notify the certificate holder of the division director's decision on the request for an extension of time for providing a written response, within five days of the request for extension from the certificate holder.
4. Preparation of Investigation Summary. Upon completion of the investigation, division staff shall prepare a written investigation summary for review by the probable cause evaluator. The investigation summary shall include an analysis of the allegations of misconduct and violations and a recommendation as to whether probable cause exists demonstrating the certificate holder committed any of the alleged acts of misconduct or violations.
5. Probable Cause Review. Pursuant to subsection (H)(4) division staff shall forward the investigation summary to the probable cause evaluator for review and determination as to whether probable cause exists misconduct or violations



occurred and are demonstrated in the investigation summary.

- a. The deputy director, serving in the capacity of probable cause evaluator pursuant to subsection (D)(3)(a), shall review the written investigation summary of the allegations of acts of misconduct or violations. The deputy director may agree or disagree with the recommendations contained in the summary and may do one or more of the following:
  - (1) Direct division staff to investigate further;
  - (2) Determine probable cause does not exist demonstrating the certificate holder has committed any acts of misconduct or violations of the statutes, court rules, this section, or the applicable section of the ACJA and enter a written finding to that effect; or
  - (3) Determine probable cause exists demonstrating the certificate holder has committed one or more acts of misconduct or violations of the statutes, court rules, this section, or the applicable section of the ACJA and enter a written finding to that effect.
- b. If the probable cause evaluator directs division staff to investigate the complaint further, pursuant to subsection (H)(5)(a)(1), division staff shall do so immediately.
- c. Upon review of the finding by the probable cause evaluator, pursuant to subsection (H)(5)(a)(2) and (3), division staff shall forward to the board, pursuant to subsection (H)(1)(i)(2), the investigation summary, finding by the probable cause evaluator and a written recommendation by the division director for the appropriate disposition of the complaint. The written recommendation by the division director shall include any sanctions if applicable, pursuant to subsections (H)(7), (H)(9), (H)(24)(a)(6) and (H)(24)(b). The board shall review these documents at the next regularly scheduled board meeting and do one of the following:
  - (1) Determine the certificate holder did not commit any acts of misconduct or violations and dismiss the complaint pursuant to subsections (D)(5)(c)(1)(g) and (H)(24)(a)(3);
  - (2) Determine the allegations of acts of misconduct or violations do not warrant discipline pursuant to subsection (D)(5)(c)(1)(g), but the certificate holder's actions need modification or elimination and send an advisory letter to the certificate holder pursuant to subsections (H)(24)(a)(4) and (H)(24)(b)(1);
  - (3) Determine the allegations of acts of misconduct or violations may be resolved through informal discipline proceedings pursuant to subsection (H)(7);
  - (4) Determine the acts of misconduct or violations may be resolved through a formal interview, pursuant to subsection (H)(8);
  - (5) Determine the acts of misconduct or violations may be resolved through a formal discipline proceeding, pursuant to subsection (H)(9); or
  - (6) Determine the acts of misconduct or violations pose harm or a risk to the public health, safety or welfare and require resolution through an emergency summary suspension, pursuant to subsection (H)(9)(d). An emergency summary suspension is a formal discipline proceeding.

6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one of more of the following:
- a. Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, this section or the applicable section of the ACJA;
  - b. Failed to comply with or complete a corrective action plan resulting from an audit or course monitoring;
  - c. Failed to cooperate with or supply information to the director, deputy director, division staff or board by the specific time stated in any request;
  - d. Aided or assisted another person or business entity to provide services requiring certification if the other person or entity does not hold the required certification;
  - e. Conviction of a criminal offense while certified by final judgment of a felony relevant to certification;
  - f. Failed to provide information regarding a criminal conviction;
  - g. Exhibited gross negligence;
  - h. Exhibited incompetence in the performance of duties;
  - i. Evaded service of a subpoena or notice of the director, division director or board;
  - j. The existence of any cause for which original certification or renewal of certification could have been denied pursuant to subsections (E)(2)(c) or (G)(4)(c) and the applicable section of the ACJA;
  - k. Engaged in unprofessional conduct, including:
    - (1) Assisted an applicant or certificate holder in the use of deception, dishonesty or fraud to secure an initial certificate or renewal of a certificate;
    - (2) Failed to comply with any court order, board order or other regulatory agency order relevant to the profession or occupation;
    - (3) Failed to comply with any federal, state or local law or rule governing the practice of the profession or occupation;
    - (4) Failed to comply with any terms of a consent agreement, restriction of a certificate or corrective action plan;
    - (5) Failed to retain client or customer records for a period of three years unless law or rule allows for a different retention period;
    - (6) Failed to practice competently by use of unsafe or unacceptable practices;
    - (7) Failed during the performance of any responsibility or duty of the profession or occupation to use the degree of care, skill and proficiency

commonly exercised by the ordinary skillful, careful and prudent professional certificate holder engaged in similar practice under the same or similar conditions regardless of any level of harm or injury to the client or customer;

- (8) Failed to practice competently by reason of any cause on a single occasion or on multiple occasions by performing unsafe or unacceptable client or customer care or failed to conform to the essential standards of acceptable and prevailing practice;
- (9) Used advertising intended to or having a tendency to deceive the public;
- (10) Used a supreme court certification to deceive the public in level of skills or abilities;
- (11) Willfully made or filed false reports or records in the practice of the profession or occupation;
- (12) Failed to file required reports, records or pleadings in the practice of the profession or occupation;
- (13) Delegated professional or occupational responsibilities or duties to an employee or person who the certificate holder knows does not possess the necessary level of education, experience, skills or credentials to perform the duties of the profession or occupation unless authorized to do so by the applicable section of the ACJA;
- (14) Performed the responsibilities or duties of the profession or occupation when medically or psychologically unfit to do so;
- (15) Engaged in habitual substance abuse;
- (16) Engaged in undue influence over a client or customer to the benefit, financial or otherwise, of the certificate holder or a third party; or
- (17) Violated any statutory, court rule, or the applicable ACJA section regarding a confidentiality requirement.

## 7. Informal Disciplinary Proceedings.

- a. Commencement. Following entry of a finding of probable cause by the probable cause evaluator and review of the recommendation of the division director pursuant to subsections (H)(5)(a) and (c), the board may commence informal disciplinary proceedings if the board finds the complaint is appropriate for resolution through informal disciplinary proceedings.
- b. Decision of the Board. The board may resolve the complaint through informal disciplinary proceedings and impose an informal sanction pursuant to subsection (H)(24)(a)(6)(a) or may take other action pursuant to this section. The board, pursuant to subsection (D)(5)(c)(1)(f)(iv), shall order the preparation of documents necessary to commence informal disciplinary proceedings. The board may make procedural determinations to consolidate or sever any informal discipline matter pursuant to subsection (D)(5)(c)(2)(e). The provisions of subsections (H)(24) and (H)(25) apply to the decision and order of the board. Informal disciplinary proceedings:
  - (1) Do not provide the certificate holder the right to a hearing;
  - (2) May result in the informal sanction of a letter of concern;
  - (3) Are not subject to special action proceedings pursuant to subsection (H)(27); and
  - (4) Are not confidential.

8. Request for Formal Interview. Upon entry of a finding of probable cause by the probable cause evaluator and review of the recommendation of the division director pursuant to subsections (H)(5)(a) and (c), and a board determination formal discipline is warranted, but before the filing of the formal statement of charges, the board may request a formal interview with a certificate holder, pursuant to subsection (D)(5)(c)(2)(d). The request for a formal interview is to determine if the facts of the complaint may be capable of resolution outside of a formal disciplinary process by consent agreement or other negotiated settlement, pursuant to subsection (H)(24)(a)(6)(c) between the board and certificate holder. The board shall hold the formal interview at the next regularly scheduled board meeting, unless the board determines good cause to expedite the interview.
- a. Once the board determines a formal interview is necessary, division staff shall provide the certificate holder a copy of the investigation summary, finding by the probable cause evaluator and the written recommendation by the division director for the appropriate disposition of the complaint. Division staff shall also provide written notice of the day and time of the scheduled interview. If the certificate holder declines the board's request for an interview, the certificate holder does not forfeit the right to request a hearing pursuant to subsection (H)(12).
  - b. If the certificate holder declines the board's request for a formal interview, or if the division director's recommended sanctions for future found violations include a suspension of more than twelve months or revocation, the board shall order the preparation of documents necessary for a filing of a formal statement of charges pursuant to subsections (D)(5)(c)(1)(f)(iv) and (H)(9)(b). The board may consolidate or sever any discipline matter pursuant to subsection (D)(5)(c)(2)(e).
  - c. Upon the completion of the formal interview, if the board enters a finding the evidence obtained during the investigation or provided by the certificate holder merits a suspension of more than twelve months or revocation of the certificate, the board shall order the preparation of documents for filing a formal statement of charges, pursuant to subsections D(5)(c)(1)(f)(iv) and H(9)(b).
  - d. Upon the completion of the formal interview, if the board enters a finding the evidence obtained during the investigation or provided by the certificate holder demonstrates the public's health, safety, or welfare requires emergency action, the board shall issue an emergency summary suspension order pursuant to subsections (D)(5)(c)(1)(f)(v) and H(9)(d).
  - e. Upon completion of the formal interview, if the board determines the evidence obtained during the investigation or provided by the certificate holder does not merit a suspension of more than twelve months, revocation, or an emergency summary suspension, the board may take one or more of the following actions:
    - (1) Determine the certificate holder did not commit any acts of misconduct or

- violations of statutes, court rules, this section, or the applicable section of the ACJA and dismiss the complaint pursuant to subsections (D)(5)(c)(1)(g) and (H)(24)(a)(3);
- (2) Determine the allegations of acts of misconduct or violations of statutes, court rules, this section, or the applicable section of the ACJA, do not warrant discipline, but the certificate holder's actions need modification or elimination and send an advisory letter to the certificate holder, pursuant to subsections (D)(5)(c)(1)(g), (H)(24)(a)(4) and (H)(24)(b)(1);
  - (3) Determine the certificate holder committed one or more acts of misconduct or violations of the statutes, court rules, this section or the applicable section of the ACJA, and the complaint is appropriate for resolution through informal discipline proceedings pursuant to subsections (D)(5)(c)(1)(g) and (H)(7);
  - (4) Determine the certificate holder committed one or more acts of misconduct or violations of the statutes, court rules, this section or the applicable section of the ACJA, and the complaint is appropriate for resolution through a consent agreement as part of formal disciplinary proceedings, pursuant to subsections (D)(5)(c)(1)(g) and (H)(24)(a)(6)(c); or
  - (5) Determine the certificate holder committed one or more acts of misconduct or violations of the statutes, court rules, this section or the applicable section of the ACJA and the complaint is appropriate for resolution only through formal discipline proceedings, pursuant to subsection (D)(5)(c)(1)(g) and (H)(9).
- f. If the board, after the formal interview is concluded, determines the acts of misconduct or violations warrant an emergency summary suspension, the board shall make an order for an expedited hearing, pursuant to subsections (H)(9)(d)(1) and (H)(12)(d).

## 9. Formal Disciplinary Proceedings.

- a. Commencement. Upon entry of a finding of probable cause by the probable cause evaluator and review of the recommendation of the division director pursuant to subsection (H)(5)(c), the board may commence formal disciplinary proceedings.
- b. Decision of the Board. On review of the recommendation of the division director, the board may resolve the complaint through formal disciplinary proceedings and impose informal and formal sanctions pursuant to subsection (H)(24)(a) and (b) or may take other actions pursuant to this section. The board, pursuant to subsection (D)(5)(c)(1)(f)(iv) shall order the preparation of the documents necessary to commence formal disciplinary proceedings. The board may make procedural determinations to consolidate or sever any formal disciplinary matter pursuant to (D)(5)(c)(2)(e). The provisions of subsections (H)(24) and (H)(25) apply to the decision and order of the board. Formal disciplinary proceedings:
  - (1) Provide the certificate holder the right to a hearing, pursuant to subsection (H)(12)(c);

- (2) May result in informal and formal sanctions, including an emergency summary suspension pursuant to subsections (H)(24)(5) and (6);
    - (3) May result in costs and civil penalties pursuant to subsections (H)(24)(6)(j) and (k);
    - (4) Are subject to special action proceedings pursuant to subsection (H)(27); and
    - (5) Are not confidential.
  - c. Notice to Certificate Holder. Upon commencement of formal disciplinary proceedings by a board order, division staff shall notify the certificate holder of the board's order and provide the certificate holder with a copy of the investigation summary, the division director's recommendations and the deputy director's finding of probable cause.
  - d. Emergency Summary Suspension.
    - (1) Upon entry of a finding of probable cause by the probable cause evaluator and review of the recommendation of the division director pursuant to subsection (H)(5)(c), if the board finds the public health, safety or welfare is at risk and requires emergency action, the board shall order an immediate emergency summary suspension of a certificate and set a date for an expedited hearing while formal disciplinary proceedings are pending.
    - (2) Division staff shall ensure the order of emergency summary suspension is immediately served on the certificate holder with the notice of the emergency summary suspension and the expedited hearing as ordered by the board, pursuant to this subsection and subsection (H)(12)(d).
    - (3) The hearing shall be held within ten days of the board's order of summary suspension.
    - (4) The hearing officer shall only grant an extension of the ten day time period for holding the expedited hearing under extraordinary circumstances at the request of either party. The certificate holder may consent to a longer time period for the extension and the reasons for the extension shall be part of the record.
    - (5) Division staff shall notify all applicable courts including superior court presiding judges, clerks of the superior court and superior court administrators of the emergency summary suspension.
10. Notice of Formal Statement of Charges and Proceedings; and Right to Hearing. Upon motion and order of the board, division staff shall:
- a. Prepare the formal statement of charges pursuant to subsection (H)(1)(i)(4) and include in the statement all of the following:
    - (1) A short and plain statement of the allegations;
    - (2) A reference to statutes, court rules, this section and the applicable ACJA section;
    - (3) A statement indicating the certificate holder has the right to a hearing, pursuant to subsection (H)(12)(c);
    - (4) A statement indicating the request for hearing shall be in writing and made

within fifteen days of receipt of the notice, pursuant to subsection (H)(13); and

(5) A statement of the requirements for filing an answer pursuant to subsections (H)(11) and (17).

- b. Present the formal statement of charges to the board chair or designee for review and signature;
- c. File the signed formal statement of charges with the disciplinary clerk;
- d. Arrange for service of the notice of formal statement of charges to the certificate holder pursuant to Rule 4, Rules of Civil Procedure; and
- e. Amendments to the formal statement of charges are permissible upon motion and order of the board.

11. Answer to Formal Statement of Charges or Default. The certificate holder shall file an answer to the formal statement of charges within fifteen days after the date the statement is served, unless otherwise ordered by the board for good cause. Answers shall comply with Rule 8, Rules of Civil Procedure. Any defenses not raised in the answer are waived. If a certificate holder fails to file an answer within the time provided, the certificate holder is in default and the factual allegations in the formal statement of charges are deemed admitted. The board may enter a finding or findings against the certificate holder of one or more of the assertions contained in the notice.

12. Right to Hearing.

- a. Except as provided in subsection (E)(1)(f)(2)(d)(iii), an applicant denied initial or renewal certification pursuant to subsections (E)(2)(c) or (G)(4) may request a hearing.
- b. Pursuant to subsection (E)(9)(b), an applicant denied reinstatement of certification may request a hearing, except if the applicant fails to provide required information within the requested time frame.
- c. A certificate holder served with a formal statement of charges pursuant to subsection (H)(9) may request a hearing.
- d. A certificate holder issued an emergency summary suspension pursuant to subsection (H)(9)(d)(1) shall have an expedited hearing.

13. Request for Hearing. The applicant or certificate holder shall request the hearing within fifteen days of the notice of denial of initial or renewal certification; or the notice of a formal statement of charges. The request shall include the ACJA subsection entitling a person or business to a hearing, the factual basis supporting the request for hearing and the relief demanded.

14. Selection of Hearing Officer for Certification or Discipline Hearing. Upon written request by an applicant or certificate holder entitled to a hearing pursuant to

subsection (H)(12), the disciplinary clerk shall select a hearing officer.

- a. The disciplinary clerk shall select a hearing officer from the list of hearing officers appointed by the supreme court. The hearing officer shall have the following qualifications:
  - (1) Admitted to the practice of law in Arizona; and
    - (a) An active member in good standing for at least seven years with the State Bar of Arizona; or
    - (b) An active or retired judicial officer.
  - (2) Have knowledge in the procedure for conducting administrative hearings regarding the denial of initial or renewal of certification or alleged acts of misconduct or violations by a certificate holder pursuant to this section or the applicable ACJA section.
- b. The disciplinary clerk may request the presiding judge of the superior court in the county where the alleged acts of misconduct or violations occurred to supply a hearing room and any other necessary resources.

15. Time Line for Hearing. The disciplinary clerk or hearing officer shall:

- a. Ensure the hearing is held within 60 days of receipt of the request for hearing. The hearing officer may continue the hearing date upon request or stipulation of the parties, or upon the hearing officer's own motion, for good cause shown. The hearing officer shall grant continuances no more than 30 days at a time and may not extend the hearing on the merits beyond 120 days from the filing of the formal statement of charges.
- b. If the request to continue the hearing is filed by division staff, the hearing officer shall ensure the hearing is held as soon as practical at the discretion of the hearing officer but no less than fifteen days after notice, as required by subsection (H)(16).

16. Notice of Hearing. The disciplinary clerk shall prepare and give notice of the hearing to the applicant or certificate holder and division staff, at least fifteen days prior to the date set for hearing.

- a. The notice shall include the following information:
  - (1) A statement of the legal authority and jurisdiction for conduct of the hearing;
  - (2) A statement of the date, time, place and nature of the hearing; and
  - (3) A reference to the particular sections of the statutes, rules and ACJA sections involved.
- b. The disciplinary clerk shall accomplish service of the notice of hearing by United States mail to the last address of record on file with division staff. Service is accomplished in accordance with Rule 5, Rules of Civil Procedure by deposit in the United States mail.



- c. If an attorney represents an applicant, certificate holder or division staff, the disciplinary clerk shall make service to the attorney of record.

#### 17. Filings of Pleadings, Motions and Other Documents.

- a. The applicant or certificate holder and division staff shall file all pleadings, motions or other documents with the disciplinary clerk at least fifteen days prior to the scheduled hearing date, unless otherwise ordered by the hearing officer.
- b. The applicant or certificate holder and division staff shall file responses to all pleadings, motions, or other documents with the disciplinary clerk within ten days of the filing of the pleading, motion, or other document.
- c. The party filing the pleading, motion, or other document may reply within five days of the filing of the response to the motion.
- d. Copies of all filings shall be delivered to the disciplinary clerk, the hearing officer and all parties to the proceeding.

#### 18. Discovery.

- a. There is no discovery, except as provided in this section, unless mutually agreed to by the parties or ordered by the hearing officer.
- b. The hearing officer, upon written request, shall order a party to allow the requesting party to have a reasonable opportunity to inspect and copy, at the requesting party's expense, admissible documentary evidence or documents reasonably calculated to lead to admissible evidence prior to a hearing, provided the evidence is not privileged.
- c. Upon the hearing officer's own motion or request by a party, the hearing officer shall order the disclosure of documentary evidence intended for use at the hearing provided the evidence is not privileged. The hearing officer shall order the disclosure at least ten days prior to the hearing.
- d. A hearing officer shall review and rule upon any claims of privilege challenged by a party with respect to subsections (H)(18)(b) and (c).
- e. Within fifteen days of receipt of the notice of hearing, the parties shall exchange a list of witnesses containing the names, addresses and telephone numbers of all persons known to have knowledge of the relevant facts. The list of witnesses shall designate those persons the parties intend to call at the hearing and summarize the anticipated testimony of each witness.
- f. Parties may submit a motion to the hearing officer to take depositions of witnesses who cannot be subpoenaed or are otherwise unable to attend the hearing, for use as evidence at the hearing. The hearing officer may order the deposition of any other witness upon motion and for good cause shown.

In either circumstance, the requesting party shall file a written motion for deposition with the hearing officer within ten days of the filing of the list of witnesses. The requesting party shall provide copies to all parties, setting forth the name and address of the witness, subject matter of the deposition, documents, if any, the parties are seeking for production, time and place proposed for the deposition and justification for the deposition.

- g. Parties shall file responses to requests for depositions, including motions to quash, within five days after the filing of the request for deposition. The hearing officer shall enter a final order regarding any motions for depositions.
- h. If a deposition is permitted and ordered by the hearing officer, the hearing officer shall issue a subpoena and written order. The subpoena and order shall identify the person to be deposed, scope of testimony to be taken, documents, if any, to be produced and the time and place of the deposition. The party requesting the deposition shall arrange for service of the subpoena and order with service on all parties five days before the time fixed for taking the deposition unless, for good cause shown, the time is shortened by the hearing officer.

#### 19. Subpoena.

- a. For the purpose of the hearing, a hearing officer may subpoena witnesses or documentary evidence, administer oaths and examine under oath any individual relative to the subject of any hearing.
- b. Subpoenas shall be issued by a hearing officer and served in the same manner as provided by Rule 45, Rules of Civil Procedure. An employee of the court or any other person as provided by Rule 45, Rules of Civil Procedure may serve the subpoena.
- c. If a person fails to obey a subpoena served in accordance with the provisions of this section, the board or hearing officer may forward a report of the disobedience, together with a copy of the subpoena and proof of service, to the superior court and request the superior court judge issue an order requiring the appearance by a person or the production of documents, or both. The superior court may treat the failure to obey the subpoena as contempt of court and may impose penalties as though the person had disobeyed a subpoena issued by the court.

#### 20. Prehearing Conference. The hearing officer may order and conduct a prehearing conference at the request of any party or on the hearing officer's own initiative. The purpose of the conference is to consider imposing limitations to promote simplicity in procedures, fairness in administration, elimination of unnecessary expense and protection of the public while preserving the rights of the certificate holder. The hearing officer may take any of the following actions:

- a. Establish a hearing schedule to ensure early and continuing control so the matter shall not be protracted because of lack of management;

- b. Dispose of outstanding procedural matters;
- c. Narrow the issues for adjudication;
- d. Dispose of preliminary legal issues, including ruling on pre-hearing motions;
- e. Obtain stipulations from the parties to the admission of evidence, facts and legal conclusions not contested;
- f. Identify witnesses and coordinate testimony; and
- g. Consider any other matters to aid in the expeditious conduct of the hearing.

## 21. Procedure at Hearings.

- a. Hearing Officer. The hearing officer shall preside over the hearing and decide all requests for a continuance, motions, determine the order of proof and manner of presentation of other evidence, issue subpoenas, place witnesses under oath, recess or adjourn the hearing and prescribe and enforce general rules of conduct and decorum. Informal disposition may be made of any case by stipulation, agreed settlement, consent order or default.
- b. Rights of Parties and Other Persons at a Hearing. At a hearing:
  - (1) A party is entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments and generally participate in the conduct of the proceeding.
  - (2) An applicant or certificate holder may represent themselves or appear through counsel. An attorney who intends to appear on behalf of a party shall promptly file a notice of appearance with the disciplinary clerk providing the name, address and telephone number of the party represented and the name, address and telephone number of the attorney. A corporate officer or principal may represent a business entity in any proceeding under this section, as permissible pursuant to Arizona Supreme Court Rule 31.
  - (3) All persons appearing before a hearing officer in any proceeding shall conform to the conduct expected in the superior court.
- c. Conduct of Hearing.
  - (1) All hearings are open to the public and shall conform to the provisions of ACJA § 1-202: Public Meetings. The hearing officer may close the hearing to the public, pursuant to ACJA § 1-202(C)(5).
  - (2) The hearing officer may conduct a hearing in an informal manner and without adherence to the rules of pleading or evidence. The hearing officer may question witnesses and shall require any evidence supporting a decision is substantial, reliable and probative and shall exclude irrelevant, immaterial or unduly repetitious evidence. There is no right to a jury.

- (3) The hearing officer shall require all testimony taken is under oath or affirmation, except matters of which judicial notice is taken or entered by stipulation. The hearing officer may administer oaths and affirmations.
- (4) In all formal disciplinary matters brought as the result of an order by the board, evidence in support of the formal statement of disciplinary charges is presented first and carries the burden of proof by a preponderance of the evidence. In matters brought at the request of any other person or entity, including requests for hearing on the denial of initial or renewal of certification, the person or entity seeking the hearing shall present first and carries the burden of proof, by a preponderance of the evidence.

d. Record of Hearing.

- (1) The hearing officer shall ensure the oral proceedings, or any part of the oral proceedings, are recorded. Upon the request of any party to the proceedings and payment of any costs, the record of the proceedings shall be transcribed.
- (2) A certified reporter shall make a full transcript of the proceedings if requested by a party within five days prior to a hearing and upon order of the hearing officer. The requesting party shall pay the cost of the transcript. The hearing officer may require prepayment or a monetary deposit to cover the cost of the transcript. If transcribed, the record is part of the court's record of the hearing and any other party with a direct interest shall receive a copy of the record, at the request and expense of the requesting party.

22. Recommendation Report of Hearing Officer.

- a. The hearing officer shall, within 30 days of the closing of the record of a hearing, prepare a written recommendation report and file the report with the disciplinary clerk. The recommendation report shall include findings of fact, based on a preponderance of the evidence and conclusions of law, separately stated.
- b. The hearing officer shall take testimony and receive evidence regarding alleged acts of misconduct or violations and possible sanctions. If the hearing officer recommends the board enter a finding the certificate holder committed one or more acts of misconduct or violations, the hearing officer shall include in the recommendation report, in a separately stated section, an analysis of mitigating and aggravating factors and recommended imposition of permissible sanctions pursuant to subsection (H)(24). The hearing officer shall base the recommendations exclusively on the matters officially noticed and the evidence presented.
  - (1) Mitigating factors may include but are not limited to the following:
    - (a) The absence of a prior disciplinary record;
    - (b) The absence of a dishonest motive;
    - (c) The absence of a selfish motive;
    - (d) Personal or emotional problems;
    - (e) A timely good faith effort to make restitution or to rectify consequences of misconduct;

- (f) Full and free disclosure to the division staff, the board or the hearing officer;
  - (g) A cooperative attitude toward any proceedings;
  - (h) Inexperience in the practice of the profession or occupation;
  - (i) Character or reputation;
  - (j) Physical or mental disability;
  - (k) Physical or mental impairment;
  - (l) Delays in the disciplinary proceedings;
  - (m) Interim rehabilitation;
  - (n) Imposition of other penalties or sanctions;
  - (o) Remorse; or
  - (p) The remoteness of prior offenses.
- (2) Aggravating factors may include but are not limited to the following:
- (a) A prior disciplinary record;
  - (b) A dishonest motive;
  - (c) A selfish motive;
  - (d) Multiple offenses;
  - (e) Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with this section, the applicable section of ACJA, court rules or orders of the hearing officer;
  - (f) Submission of false evidence, false statements or other deceptive practices during the discipline process;
  - (g) Refusal to acknowledge wrongful nature of the conduct;
  - (h) Vulnerability of the victim;
  - (i) Substantial experience in the profession or occupation; or
  - (j) Indifference to making restitution.
- c. The disciplinary clerk shall distribute the hearing officer recommendation report to all parties and the board by United States mail to the last address on file with the division staff. Distribution is accomplished in accordance with Rule 5, Rules of Civil Procedure by deposit in the United States mail.
- d. The board may adopt or modify the hearing officer's recommendation report in whole or in part.
- e. The board may remand the matter to the hearing officer in whole or in part, designating the issues remanded. The board shall provide the hearing officer with an order identifying the issues remanded.
23. Rehearing. A party to the hearing may request a rehearing of the matters involved in the hearing. The requesting party shall file the written request with the hearing officer and the disciplinary clerk within fifteen days after the disciplinary clerk has distributed the hearing officer's recommendation report to the parties pursuant to subsection (H)(22)(c). The requesting party shall base the request for rehearing on one or more of the grounds listed in Rule 59, Rules of Civil Procedure. The hearing officer shall allow any party served with a request for rehearing to file a response within ten days of service. The hearing officer may grant a rehearing of the matters involved in the hearing and shall make the decision to grant or deny the request within ten days of the date the response for rehearing is filed.

## 24. Possible Actions for Resolution of a Complaint.

- a. Upon completion of an investigation concerning alleged acts of misconduct or violations by a certificate holder, which may or may not include a formal interview, informal or formal disciplinary proceedings, or a hearing, the board shall do one or more of the following:

- (1) Request division staff to conduct further investigation;
- (2) Refer the complaint to another entity with jurisdiction;
- (3) Determine no violation exists and dismiss the complaint with or without prejudice;
- (4) Determine no acts of misconduct or violation occurred and no discipline is warranted; however, the certificate holder's actions need modification or elimination and issue an advisory letter pursuant to subsection (D)(5)(c)(1)(g);
- (5) Enter a finding the certificate holder has violated any of the provisions of the statutes, court rules, this section, or the applicable ACJA specific sections or subsection (H)(6) and order an emergency summary suspension, pursuant to subsection (H)(9)(d);
- (6) Enter a finding the certificate holder has violated any of the provisions of the statutes, court rules, this section, the applicable ACJA sections or subsection (H)(6) and issue an order imposing any or a combination of the following informal or formal disciplinary sanctions:
  - (a) Issue a letter of concern;
  - (b) Issue a censure;
  - (c) Resolve any found acts of misconduct or violations by consent order or other negotiated settlement;
  - (d) Place specific restrictions on a certificate;
  - (e) Place the certificate holder on probation for a set period of time under specified conditions;
  - (f) Mandate additional training for the certificate holder;
  - (g) Issue a cease and desist order pursuant to subsection (E)(6);
  - (h) Order suspension of a certificate for a set period of time with specific conditions for reinstatement;
  - (i) Order revocation of a certificate with specific conditions for reinstatement;
  - (j) Assess costs associated with the investigation and disciplinary proceedings; or
  - (k) Impose civil penalties associated with the investigation and disciplinary proceedings.

- b. The following provisions apply to the actions specified in subsection (H)(24)(a):

- (1) An advisory letter is not a discipline sanction and is confidential. While the conduct does not warrant any disciplinary action, the board believes the certificate holder should modify or eliminate certain practices and continuation of the activities leading to the documentation regarding the conduct being submitted to the board may result in future board action

against the certificate holder. A certificate holder may file a response with the board no later than fifteen days after the date of the advisory letter. The certificate holder's response is confidential and division staff shall file the response in the complaint file.

(2) An informal disciplinary proceeding may result in a letter of concern but may not include a censure, restrictions on a certificate, probation, mandated additional training, suspension or revocation of the certificate, or imposition of civil penalties or costs. A letter of concern is a written informal discipline sanction and is not confidential or appealable. A certificate holder may file a response to the letter of concern no later than fifteen days after the date of the letter of concern. The certificate holder's response is public and division staff shall file the response in the complaint file.

(3) The board may impose informal discipline in combination with formal discipline.

25. Decisions and Orders. The board shall make final decisions or orders in writing and shall include findings of fact and conclusions of law, separately stated. The board shall make findings of fact by a preponderance of the evidence, based exclusively on the evidence and on matters officially noticed and consider mitigating or aggravating factors pursuant to subsections (H)(22)(b)(1) and (2).

26. Notice of Board's Final Decision. Upon final order of the board regarding a certification or complaint matter, division staff shall provide written notice of the board's final decision and order:

a. Regarding an initial or renewal certification matter, to the applicant or certificate holder within ten days, by deposit in the United States mail addressed to the last known address on file with division staff. Notice by mail is complete upon deposit in the United States mail.

b. Regarding suspension or revocation of certification to the certificate holder by certified mail, return receipt requested, within two days, addressed to the last known address on file with division staff pursuant to subsection (H)(1)(i)(8). Division staff shall ensure the order of emergency summary suspension is immediately served on the certificate holder pursuant to subsection (H)(9)(d)(2). Division staff shall send any other disciplinary order by the board, not involving suspension or revocation of certification, to the certificate holder within ten days by deposit in the United States mail addressed to the last known address on file with division staff, pursuant to subsection (H)(1)(i)(7). Notice by mail is complete upon deposit in the United States mail.

c. Regarding a complaint matter, to the complainant within ten days, pursuant to subsection H(1)(i)(7), by deposit in the United States mail addressed to the last known address on file with division staff. Notice by mail is complete upon deposit in the United States mail.

27. Filing of Special Action. Decisions of the board pursuant to this section and the applicable ACJA sections are final. Parties may seek judicial review through a

petition for a special action within 35 days after entry of the board's final order. The petition for special action shall be pursuant to the Arizona Rules of Procedure for Special Actions.

### **ACJA 7-206 (C) – Purpose**

**C. Purpose.** A.R.S. § 32-4003(A) provides “A person shall not report proceedings in any court in this state and shall not report depositions in this state for use in any court in this state unless the person is certified pursuant to this chapter.” A.R.S. § 32-4003(D) provides: “It is unlawful for any person who is not certified pursuant to this chapter to represent oneself as a certified reporter.” For eligibility to report a verbatim record in any sworn proceeding in this state for use in any court in this state, all persons shall hold a valid certificate and comply with the requirements of this section. The certified reporter's transcript is an important document before, during and after a trial. The paper transcript and its electronic version are used for trial preparation, briefs, impeachment purposes and appellate review. Property, freedom and life all can depend on a clear and accurate record. Certified reporting is integrally related to the prompt, effective and impartial operation of the judicial system.

### **ACJA 7-206 (D) – Administration**

#### **D. Administration.**

1. Role and Responsibilities of the Supreme Court. In addition to the requirements of ACJA § 7-201(D), A.R.S. § 32-4007(A) and (C) establishes the certified reporters fund and specifies “The supreme court shall administer the fund” and “The supreme court may receive and expend monies from the fund . . . .”
2. Role and Responsibilities of the Director. These responsibilities are contained in ACJA § 7-201(D).
3. Role and Responsibilities of the Deputy Director. These responsibilities are contained in ACJA § 7-201(D).
4. Role and Responsibilities of Division Staff. These responsibilities are contained in ACJA § 7-201(D).
5. Board of Certified Reporters.
  - a. Composition. Pursuant to A.R.S. § 32-4004:
    - A. The board of certified reporters is established consisting of the following members:
      1. The chief justice of the supreme court or the chief justice's designee.
      2. One judge of the court of appeals who is appointed by the chief justice of the supreme court.



3. One superior court judge who is appointed by the chief justice of the supreme court.
4. Two certified reporters who are residents of this state, who have been official court reporters for at least five years and who are appointed by the chief justice of the supreme court.
5. Two certified reporters who are residents of this state, who have been freelance reporters for at least five years and who are appointed by the chief justice of the supreme court.
6. One attorney who is a resident of this state, who has been licensed to practice law in this state for at least five years and who is appointed by the chief justice of the supreme court.
7. One public member who is appointed by the chief justice of the supreme court.

B. Members who are appointed pursuant to subsection A, paragraphs 2 through 7 serve five year terms. The chief justice shall fill a vacancy for any unexpired portion of a term in the same manner as the original appointment.

C. A majority of the members shall elect a chairperson.

- b. Term of Chief Justice or Chief Justice Designee. The member appointed pursuant to § 32-4004(A)(1) shall serve at the pleasure of the chief justice.
- c. Duties. These duties are contained in A.R.S. §§ 32-4004(E) and -4005(B). In addition, this subsection should be read in conjunction with ACJA § 7-201(D) which is consistent with A.R.S. §§ 32-4004(E) and -4005(B).

## **ACJA 7-206 (E) – Initial Certification**

### **E. Initial Certification.**

1. Eligibility for Application.
  - a. A.R.S. § 32-4021(A) provides:
    - A. An applicant for standard certification as a certified reporter . . . at a minimum shall:
      1. Be at least eighteen years of age.
      2. Be a citizen or legal resident of the United States.
      3. Satisfy the requirements of § 32-4022.
      4. Be of good moral character.

5. Possess a high school diploma or a general equivalency diploma or a similar document or certificate.
  6. Pursuant to rules adopted by the supreme court demonstrate reasonable proficiency in making verbatim records of trial or judicial or related proceedings.
  7. Comply with the laws and rules and orders adopted by the supreme court governing certified reporters in this state.
  8. Pay the fees established pursuant to § 32-4008.
- b. An applicant shall provide proof of passing the registered professional reporter's examination (RPR) or the certified verbatim reporter's examination (CVR) and shall also pass the Arizona Written Examination pursuant to ACJA § 7-201(E) and subsections (E)(3)(b) and (c).
2. Application for Initial Standard Certification. The procedures for application for initial certification are provided in A.R.S. § 32-4021 and ACJA § 7-201. Applicants for certification shall also meet the examination requirements specified in subsection (E)(3) and pursuant to A.R.S. § 32-4021(A)(9) an applicant shall "Submit a full set of fingerprints with the fee prescribed in § 41-1750 to the supreme court for the purpose of obtaining a state and federal criminal records check pursuant to § 41-1750 and Public Law 92-544."
  3. Examination. In addition to the requirements of ACJA § 7-201(E) the following requirements apply:
    - a. Purpose. Pursuant to A.R.S. § 32-4005(B) and ACJA § 7-201(E), the examination for initial certification is to "[d]etermine through testing . . . an applicant's ability to make a verbatim record of proceedings that may be used in any court by means of written symbols or abbreviations in shorthand, or machine writing or voice writing."
    - b. Admission to the Arizona Written Examination.
      - (1) A.R.S. § 32-4022(A) provides:
        - A. A person shall not be admitted to an examination without presenting satisfactory evidence to the board that before the date on which the application for examination was filed the person has done at least one of the following:
          1. Obtained one year of experience in making verbatim records of meetings, conferences, hearings or judicial or related proceedings by means of written symbols or abbreviations in shorthand, machine writing or voice writing and in transcribing these records.

2. Obtained a verified certificate of the satisfactory completion of a prescribed course of study from a court reporting school or a certificate from a school that evidences the equivalent proficiency and the ability to make a verbatim record of material that is dictated pursuant to rules adopted by the supreme court.
  3. Obtained a national court reporters association's registered professional reporter or registered merit reporter certificate.
  4. Obtained a valid certificate to practice court reporting that is issued by a state other than this state if the other state's requirements and certifying examination are substantially similar to or more stringent than those in this state.
  5. Demonstrated reasonable proficiency in making verbatim records of trial or judicial or other related proceedings by passing an approved examination for certification pursuant to rules adopted by the supreme court.
- c. Examination Procedures. In addition to the requirements of ACJA § 7-201(E), the procedures for examination are prescribed in A.R.S. § 32-4022:
- (1) A.R.S. § 32-4022(B) provides:
    - B. The examination for certification consists of the following two parts:
      1. A national court reporters association's registered professional reporter examination, a national verbatim reporters association's certified verbatim reporters association examination or an alternative demonstration of proficiency approved by the supreme court.
      2. A written knowledge test of rules of the supreme court of Arizona and statutes of this state relating to court reporters.
  - (2) The National Court Reporters Association (NCRA) RPR written knowledge test (WKT) and skills knowledge test (SKT) and the National Verbatim Reporters Association (NVRA) CVR, are the approved proficiency examinations to meet the minimum proficiency examination requirements of A.R.S. § 32-4022(B)(1).
  - (3) An applicant satisfies the proficiency examination requirements by passing either the RPR or CVR examination as specified in A.R.S. § 32-4022(B)(1) and subsection (E)(3)(c)(2).
  - (4) An applicant shall perform the duties of the profession using only the method of reporting the applicant used to obtain certification.
  - (5) A.R.S. § 32-4022(F) provides: "An applicant who fails to pass the written examination . . . may apply for reexamination at any time."

4. Decision Regarding Certification. In addition to the requirements contained in ACJA § 7-201(E), the procedures for the decision regarding certification are pursuant to A.R.S. §§ 32-4021(B), -4024(A) and -4024(B).
  - a. Approval of Initial Standard Certification. These requirements are contained in ACJA § 7-201(E).
  - b. Denial of Initial Standard Certification. The requirements are contained in ACJA § 7-201(E).

#### **ACJA 7-206 (F) - Role and Responsibilities of Certified Reporters**

**F. Role and Responsibilities of Certified Reporters.** In addition to the requirements of ACJA § 7-201(F), the following requirements apply:

1. Code of Conduct. Each certified reporter shall adhere to the code of conduct adopted pursuant to A.R.S. § 32-4005 and subsection (J).
2. Identification. A.R.S. § 32-4003(C) provides “A certified reporter shall include the title ‘certified reporter’ or the abbreviation ‘CR’ and the reporter’s certificate number on the title or cover page of any transcript, on any business card, advertisement or letterhead and on the certificate of any transcript.”
3. Certification of Transcripts. A.R.S. § 32-4003(B) provides “A certified reporter shall sign and certify each transcript that the certified reporter prepares before the transcript may be used in court, except for transcripts that the reporter prepares for proceedings that occurred before July 1, 2000.”
4. Transcript Production. The following requirements apply to transcript production:
  - a. Transcript Format. A certified reporter shall prepare transcripts in a format consistent with the standards in subsection (M).
  - b. Production after Expiration of Certificate, Inactive Status or Voluntary Resignation. A reporter who is no longer certified, or who is in inactive status may not practice as a reporter or produce transcripts except for those proceedings that took place while their certificate was valid and active. The reporter shall use the same certificate number on the title or cover page of any transcript and letterhead that was used while the reporter was certified.
5. Oaths and Affirmations. A.R.S. § 32-4025 provides: “A certified reporter may administer oaths and affirmations.”

#### **ACJA 7-206 (G) – Renewal of Certification**

**G. Renewal of Certificate.** In addition to the requirements contained in ACJA § 7-201(G) the following requirements apply:

1. Expiration Date. A.R.S. § 32-4023(A) provides: “A certificate issued pursuant to this article is subject to renewal each year and expires unless renewed by December 31.”
2. Application. A.R.S. § 32-4023(B) provides: “The certificate holder is responsible for applying for a renewal certificate.” A certified reporter shall annually submit a completed renewal application, applicable fees pursuant to subsection (K) and documentation by the renewal application deadline established by the board to remain eligible to serve as a certified reporter in Arizona.
3. Continuing Education. A.R.S. § 32-4023(D) provides: “A certificate holder shall include with the application for renewal documentation satisfactory to the board that the certificate holder has successfully completed at least ten hours of approved continuing education each year.” The certificate holder shall comply with the provisions regarding continuing education contained in subsection (L).
4. Types of Certificates.
  - a. Temporary Certificate.
    - (1) Pursuant to Laws 1999, Ch. 335, § 3, and Laws 2000, Ch. 41, § 13, "All temporary certificates shall be renewed annually and may not be renewed beyond December 31, 2002, except that the board may renew temporary certificates after December 31, 2002 due to extenuating circumstances." An applicant may request and the board may grant renewal of a temporary certificate if the applicant meets all of the following conditions:
      - (a) Holds a valid temporary certificate; and
      - (b) Complies with the policies on requests for extensions of temporary certification based on extenuating circumstances as adopted by the board.
    - (2) If the board does not find an extenuating circumstance exists but does find the applicant meets the requirements for provisional standard certification pursuant to subsection (G)(4)(b), the board may, in its discretion, convert the applicant's certificate to a provisional standard certificate.
  - b. Provisional Standard Certificate.
    - (1) An applicant may request and the board may grant renewal of a provisional standard certificate if the applicant meets all of the following conditions:
      - (a) Holds a valid provisional standard certificate;
      - (b) Passed at least one of the three required SKT components and the WKT test of the RPR examination;
      - (c) Has not held a provisional standard certificate for more than twelve months; and
      - (d) Meets all other requirements for renewal.
    - (2) In addition to the provisions of subsection (G)(4)(a)(2), an applicant may request their temporary certificate be renewed by conversion to a

provisional standard certificate and the board may grant a provisional standard certificate if the applicant meets all of the following conditions:

- (a) Holds a valid temporary certificate;
- (b) Has passed one of the three required SKT components and the WKT test of the RPR examination;
- (c) Meets all other requirements for renewal. Upon certificate conversion from temporary to provisional standard certification, the applicant shall comply with all renewal requirements pursuant to subsection (G)(4)(b)(1); and
- (d) An applicant granted renewal by conversion from temporary to provisional standard certification shall pass the remaining components of the RPR within twelve months of being granted provisional standard certification. The board shall not renew a provisional standard certificate if the applicant fails to complete the RPR within the twelve months.

c. **Standard Certificate.**

(1) An applicant may apply for and the board may renew a standard certificate of an applicant who:

- (a) Holds a valid standard certificate; and
- (b) Meets all other requirements for renewal.

5. **Decision Regarding Renewal.** In addition to the requirements contained in ACJA § 7-201(E) and (G) the following requirements apply:

- a. A.R.S. § 32-4023(B) provides: “On receipt of the renewal application and the renewal fee, the board shall issue the applicant a new certificate for one year unless the board finds that the applicant does not meet the requirements for renewal or that section 32-4024 applies.”
- b. The board may deny renewal of a certificate for any of the reasons specified in § 32-4024.

**ACJA 7-206 (J) – Code of Conduct**

**J. Code of Conduct.** The following code of conduct is adopted by the supreme court to apply to all certified reporters pursuant to Title 32, Chapter 40, Arizona Revised Statutes. The purpose of this code of conduct is to establish minimum standards for performance by certified reporters.

1. **Ethics.**

- a. A certified reporter shall avoid impropriety and the appearance of impropriety in all professional activities, shall respect and comply with the laws and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judicial system.

- b. A certified reporter shall exercise fairness and impartiality toward each participant in all aspects of reported proceedings and always offer to provide comparable service to all parties in a proceeding.
- c. A certified reporter shall have no personal or financial self-interest in the reporting of a proceeding and shall exercise caution to avoid any appearance of self-interest.
- d. A certified reporter shall be alert to situations that are conflicts of interest that may give the appearance of a conflict of interest or create an appearance of partiality.
- e. A certified reporter shall promptly make full disclosure to all parties or their representatives of any relationships which may give the appearance of a conflict of interest or partiality.
- f. A certified reporter shall refrain from knowingly making misleading, deceptive, untrue or fraudulent representations while in the practice of reporting. A certified reporter shall not engage in unethical or unprofessional conduct that is harmful or detrimental to the public in the practice of reporting. Proof of actual injury is not required.
- g. Contracts for reporter services between persons holding certificates under this section or any person for whom the reporters act as agents and any attorney at law or agent or any insurance company or agent or any other person, are prohibited.
  - (1) This subsection shall not apply to contracts for certified reporting services for the courts, agencies, or instrumentalities of the United States or of the state of Arizona.
  - (2) A reporter may upon request of an attorney or an agent of an attorney or an insurance company, quote rates for both originals and copies of depositions for a particular deposition to be taken, or for all depositions in a case, provided the same rate is charged to all other parties obtaining copies and disclosure is made to all parties involved in the case. Quoting rates for all depositions in a case does not constitute a contract.
  - (3) A certified reporter shall not relinquish control of transcript production, distribution and invoicing to any entity in a manner which prevents the certified reporter from complying with the requirements of this section, and the applicable state and local laws, rules and regulations.
- h. A reporter shall not take a deposition if the certified reporter is:
  - (1) A party to the action;
  - (2) A relative, employee, or attorney of one of the parties;
  - (3) Someone with a financial interest in the action or its outcome; or,
  - (4) A relative, employee, or attorney of someone with a financial interest in the action or the outcome. For the purposes of this subparagraph, "employee" or "relative" shall not include an employee or relative of the attorney or one of the parties.

(5) An “employee” includes a person who has a continuing contractual relationship, express or implied, with a person or entity interested in the outcome of the litigation, including anyone who may have ultimate responsibility for payment to provide reporting or other court services, and a person who is employed part-time or full-time under contract or otherwise by a person who has a contractual relationship with a party to provide reporting or other court services.

- i. A judicial officer may declare a deposition void if a certified reporter with an association to a matter, as described in this subsection, takes a deposition.

## 2. Professionalism.

- a. A certified reporter shall preserve the confidentiality and ensure the security of information, verbal or written, entrusted to the certified reporter by the court or any of the parties in the proceeding.
- b. A certified reporter shall be truthful and accurate when advertising or representing the certified reporter’s qualifications, skills, abilities, or the services provided.
- c. A certified reporter shall maintain and observe the highest standards of integrity and truthfulness in all professional dealings.
- d. A certified reporter shall keep abreast of current literature, technological advances and developments and shall fulfill ongoing training requirements to maintain professionalism.
- e. As part of the judicial department's commitment to the principle of access to justice for all and the integral role of certified reporters, certified reporters are encouraged to provide pro bono services, when requested through qualified legal assistance organizations providing free legal services to the indigent. Certified reporters providing pro bono services pursuant to this subsection shall disclose the pro bono services to all parties in the case.

## 3. Fees and Services.

- a. Except as provided in subsection (J)(2)(e), a certified reporter shall charge all parties or their attorneys in the same action the same price for an initial copy of a transcript. Additional copies purchased by the same ordering party may be charged at a reduced rate provided disclosure is made to all parties involved in the case and the same reduced rate for additional copies is provided to all parties involved in the case. Each party shall be treated as an individual party to the action and is required to purchase an initial copy at the same rate provided to all parties requesting a copy in the same action before they may obtain additional copies at a reduced rate. A certified reporter may provide services on a pro bono basis as provided in this section.
- b. A certified reporter shall, upon request at any time, disclose in writing an itemization of all rates and charges to all parties or their attorneys, or to



division staff. A certified reporter shall maintain an accurate account of services rendered and provide copies of invoices to any requesting party involved in the case or upon the request of the board or division staff.

- c. A certified reporter shall determine fees independently, except when established by statute or court order, entering into no unlawful agreements with other reporters on the fees to any user.
- d. A certified reporter shall charge no less than 60 percent more for an original transcript than what is charged for copies in all cases. The charge for the original transcript includes the per diem paid for the reporter's appearance.
- e. A certified reporter shall at all times be aware of and avoid impropriety or the appearance of impropriety, which may include, but is not limited to:
  - (1) Establishing contingent fees as a basis of compensation;
  - (2) Directly or indirectly receiving of any gift, incentive, reward, or anything of value as a condition of the performance of professional services;
  - (3) Directly or indirectly offering to pay any commission or other consideration in order to secure professional assignments;
  - (4) Directly or indirectly giving, for the benefit of employment, any gift, incentive, reward or anything of value to attorneys, clients, witnesses, insurance companies or any other persons or entities associated with the litigation, or to the representatives or agents of any of the foregoing, except for:
    - (a) Nominal items that do not exceed \$25.00 per transaction and \$100.00 in the aggregate per recipient each year; and
    - (b) Pro bono services; and
  - (5) Entering into any written or verbal financial relationship with counsel, parties of interest or their intermediaries that:
    - (a) Undermines the actual or perceived impartiality of the certified reporter; or
    - (b) Does not provide or offer any private party of interest comparable reporting services in the same proceedings.

#### 4. Skills and Practice.

- a. A certified reporter shall take full and accurate stenographic or voice written notes of any proceeding and shall not wilfully alter the notes.
- b. A certified reporter shall accurately transcribe verbatim any stenographic or voice written notes taken at any proceeding and shall not wilfully alter the transcript.
- c. A certified reporter shall provide a transcript to a client or court in a timely manner. The certified reporter shall meet promised delivery dates and make timely delivery of transcripts when no date is specified. A certified reporter shall meet transcript preparation deadlines in accordance with rules, statutes, court orders, or agreements with the parties. A certified reporter shall provide immediate notification of delays.

- d. A certified reporter shall not go “*off the record*” during a deposition or court proceeding unless agreed to by all parties or their attorneys or ordered by the court.
- e. A certified reporter shall accept only those assignments for which the reporter’s level of competence will result in the preparation of an accurate transcript. The certified reporter shall decline an assignment when the reporter’s abilities are inadequate.
- f. A certified reporter shall prepare the record in accordance with applicable laws, rules or court order.
- g. A certified reporter shall preserve the stenographic or voice written notes in accordance with Arizona laws, federal laws and the Arizona Rules of Court.

#### 5. Official Reporters.

- a. An official reporter may engage in freelance reporting duties only if the following criteria are met:
  - (1) The presiding superior court judge or designee has given express authorization; the reporter’s official work is up to date and there are no transcripts the reporter is preparing in which a court has granted an extension of time; and
  - (2) The presiding superior court judge or designee has authorized the reporter to take annual leave during the time the freelance work is scheduled unless:
    - (a) The freelance work is scheduled during hours the court is not open for business; or
    - (b) The presiding superior court judge or designee has granted the reporter time off in compensation for overtime previously worked.
- b. A certified reporter shall never purport to speak or act for a judge regarding judicial matters.
- c. A certified reporter shall not express an opinion as to how a case should be decided or what verdict a jury will return.

#### 6. Performance in Accordance with Law.

- a. A certified reporter shall perform all duties and discharge all obligations in accordance with applicable laws, rules or court orders.
- b. A certified reporter shall perform the duties of the profession using only the method of reporting the applicant used to obtain certification.

### **ACJA 7-206 (K) – Fee Schedule**

#### 1. Initial Certification Fees.

|  |          |
|--|----------|
| a. Initial Certification for Two Year Certification Period   | \$450.00 |
| (1) For certification expiring more than one year after application date   | \$450.00 |
| (2) For certification expiring less than one year after application date   | \$225.00 |
| b. Fingerprint Processing  |          |
| (Rate as set by Arizona law and subject to change)   |          |
| 2. Examination Fee for the Arizona Written Test  |          |
| a. Applicants for Initial Certification  | \$50.00  |
| b. Reexaminations  | \$50.00  |
| (For any applicant who did not pass the examination on the first attempt. The \$50.00 fee applies to each reexamination.)            |          |
| c. Re-registration for Examination   | \$50.00  |
| (For any applicant who registers for an examination date and fails to appear at the designated site on the scheduled date and time.) |          |
| 3. Renewal Certification Fees.   |          |
| a. Certification Renewal   | \$400.00 |
| b. Inactive Status   | \$100.00 |
| c. Late Renewal  | \$ 50.00 |
| d. Delinquent Continuing Education   | \$100.00 |
| 4. Miscellaneous Fees  |          |
| a. Replacement of Certificate or Name Change   | \$25.00  |
| b. Public Record Request per Page Copy   | \$0.50   |
| c. Certificate of Correctness of Copy of Record  | \$18.00  |
| d. Reinstatement Application   | \$100.00 |
| (Application for reinstatement to certification after suspension or revocation of certification.)                                    |          |

## **ACJA 7-206 (L) – Continuing Education Policy**

### **L. Continuing Education Policy.**

#### **1. Purpose.**

- a. Reporting is integrally related to the prompt, effective and impartial operation of the judicial system. Certified reporters are required to demonstrate a basic level of competency to become certified and practice in Arizona. Ongoing, continuing education is one means to ensure a certified reporter maintains continuing competence in the field of reporting after certification is obtained. Continuing education also provides opportunities for certified reporters to keep abreast of changes in the reporting and legal professions and the Arizona judicial system.
- b. Pursuant to A.R.S. § 32-4005(B) and ACJA § 7-201(D), the board shall make recommendations to the supreme court regarding rules and procedures to implement the provisions of certification of reporters, including continuing education. This subsection is intended to provide direction to certified reporters to ensure compliance with the statutes and continuing education requirements, and to provide for equitable application and enforcement of the continuing education requirements.

#### **2. Applicability.**

- a. Pursuant to A.R.S. § 32-4023(D), ACJA § 7-201(G), and subsection (G)(3), all certified reporters shall complete at least ten hours of continuing education each calendar year.

#### **3. Responsibilities of Certified Reporters.**

- a. It is the responsibility of each certified reporter to ensure compliance with the continuing education requirements, maintain documentation of completion of continuing education and provide the documentation upon the request of the board or division staff.
- b. Upon request of the board or division staff, a certified reporter shall provide any additional information required by the board or division staff when reviewing continuing education applications and documentation.
- c. Continuing education not recognized for credit upon board review does not in any way relieve the certified reporter of the responsibility to complete the required hours of continuing education.

#### **4. Authorized Continuing Education Activities.**

- a. Continuing education is designed to provide an understanding of current developments, skills or procedures related to the practice of reporting.

Continuing education shall address the areas of proficiency, competency and performance of stenographic or voice written reporting and impart knowledge and understanding of the profession of reporting, the Arizona judiciary and the legal process and increase the participant's understanding of the responsibilities of a certified reporter and the reporter's impact on the judicial process. The certified reporter shall complete the continuing education requirements in one or more of the following subject areas:

- (1) English, including grammar and punctuation, vocabulary and etymology, proofreading and editing and regional and minority dialects, colloquialisms and commonly heard slang.
- (2) Medical terminology presented by subject matter experts on terminology and concepts commonly encountered by certified reporters including Greek and Latin roots, homonyms and sound-alikes, abbreviations, pharmacy, anatomy and physiology and specialized medical fields, (for example, neurology, dentistry, radiology, forensic medicine).
- (3) Legal terminology presented by subject matter experts on terminology and concepts commonly encountered by certified reporters including etymology, substantive law, procedural law, various subdivisions of law (for example, criminal, domestic, juvenile, civil) and how cases are processed and argued.
- (4) Other technical subjects presented by subject matter experts with emphasis on terminology and concepts commonly encountered by certified reporters (for example, accident reconstruction, chemistry, construction, workman's compensation, products liability).
- (5) Reporting technology including computer-aided transcription (CAT) skills: CAT equipment, hardware and software, DOS, ASCII and compressed transcript; computer skills including word processing, spreadsheets, database applications, windows and internet applications; equipment maintenance and computer-integrated courtrooms.
- (6) Realtime reporting including writing for realtime, communicating with the hearing impaired, working with an interpreter, the Americans with Disabilities Act and realtime certification.
- (7) Certification tests, including the Registered Merit Reporter, Registered Diplomat Reporter, Certified Realtime Reporter, Certified Manager of Reporting Services and Certificate of Merit and Realtime Verbatim Reporter. A certified reporter may receive continuing education credit for these activities in accordance with the standards established by the NCRA and the NVRA.
- (8) Ethics for certified reporters and court employees, including cooperation with lawyers, judges, court staff, and fellow certified reporters, professional attire, courtesy and impartiality to all litigants, information verses legal advice and public relations.
- (9) The Arizona court system including the state and federal constitution, branches of government, Arizona court jurisdiction and responsibilities, and Arizona tribal court system; resource materials including the Arizona Revised Statutes, Arizona Rules of Court, case law and administrative orders and rules; and current issues in the Arizona court system.
- (10) Role and responsibilities of certified reporters, including the statutes and ACJA §§ 7-201 and -206 for certified reporters.

- (11) Writing and editing skills including transcript style and setups, appropriate editing, scoping, scanning and printing, writing for a note reader, scopist or editor; indexing of witnesses and exhibits and transcript formats.
  - (12) Research skills including utilizing reference materials and libraries and research techniques.
  - (13) Management issues including public relations and customer service; accounting, ergonomics, time management and office management.
- b. Conferences. A certified reporter may receive continuing education credit for attendance at a conference relevant to the profession of reporting. A certified reporter may receive 100 percent of the continuing education credits for attendance at the conference, if the conference is directly related to the reporting profession. Introductory remarks, breaks, meals, business meetings, and general sessions of the conference do not qualify as continuing education hours.
  - c. University, College and Other Educational Institution Courses. A certified reporter may receive continuing education credit for a course provided by a university, college or other institutionally accredited educational program if the reporter successfully completes the course with a grade of "C" or better or a "pass" on a pass/fail system. A certified reporter may receive continuing education credit if the course is relevant to the reporting profession and may receive credit up to two times the number of credit hours awarded by the educational institution. The maximum total hours of continuing education credits earned from educational course work shall not exceed 50 percent of the total number of continuing education hours required for renewal.
  - d. Authoring or Coauthoring Articles. A certified reporter may receive continuing education credit for authoring or coauthoring an article directly related to reporting, if the article is published in a state or nationally recognized professional journal of court reporting or law and if the article is a minimum of 1,000 words in length. A certified reporter may receive a maximum of three hours of continuing education credit for authoring an article or articles during a renewal period. A certified reporter shall not receive continuing education credit for the same article published in more than one publication or republished in the same publication in later editions.
  - e. Self Study. A certified reporter may receive continuing education credit for self study activities, including video and audio tapes, and other methods of independent learning. A certified reporter shall not receive continuing education credit for simply reading books, seminar or other printed materials. Except for NCRA courses, the maximum hours of continuing education credits earned in a self study format shall not exceed 50 percent of the total number of continuing education hours required for renewal.
  - f. Serving as Faculty. A certified reporter may receive continuing education credit for serving as an instructor, speaker, panel member or faculty of a continuing education seminar directly related to the profession of reporting. A certified reporter may receive continuing education credit for the actual presentation time and up to two hours of preparation time for each hour of

- presentation. The maximum hours of continuing education credits earned as faculty credit shall not exceed 50 percent of the total number of continuing education hours required for renewal and a certified reporter shall not receive duplicate credit for repeating a presentation during the certificate period.
5. **Minimum Time.** Each continuing education activity shall consist of at least 30 minutes of “actual clock time” spent by a certified reporter in actual attendance at and completion of an approved continuing education activity. “Actual clock time” includes the total number of hours attended, minus the time spent for introductory remarks, breaks, meals and business meetings. After completion of the first 30 minutes of a continuing education activity, credit shall be recognized in fifteen minute increments.
  6. **Maximum Credit.** Unless the board otherwise determines a continuing education activity is directly related to the reporting profession, a certified reporter shall not receive more than 50 percent of the credit requirement for the certificate period through one activity.
  7. **Non-Qualifying Activities.**
    - a. The following activities, regardless of whether or not the activity is approved for COJET credit, shall not qualify for continuing education credit for certified reporters:
      - (1) Programs completed for qualification for initial certification;
      - (2) Programs with a primary focus on teaching nonverbal skills that are not directly related to reporting;
      - (3) Attendance or participation at professional or association business meetings, general sessions, elections, policymaking sessions or program/employee orientation;
      - (4) Serving on committees or councils or as an officer in a professional organization;
      - (5) Activities completed as required by the board as part of a disciplinary action; and
      - (6) Mentoring activities by a certified reporter.
    - b. Repeat of an Activity. Continuing education activities repeated during a certificate period do not qualify for credited duplicate hours.
    - c. If a certified reporter attends part, but not all of a continuing education activity, the certified reporter is not eligible to claim partial credit.
  8. **Documentation of Attendance or Completion.** When attending or completing a continuing education activity, each certified reporter shall obtain documentation of attendance or completion from the sponsoring entity. At a minimum, the proposal shall include the:
    - a. name of the sponsor;
    - b. name of the participant;
    - c. topic of the subject matter;

- d. number of hours actually attended or the number of credit hours awarded by the sponsoring entity;
- e. date and place of the program; and
- f. signature of the sponsor, or an official document from the sponsoring entity.

9. Compliance and Non-Compliance.

- a. Affidavit of Compliance. A certified reporter shall submit an affidavit of continuing education compliance when applying for renewal of certification. The certified reporter shall submit the affidavit in the format provided by division staff. The board and division staff may request documentation or additional information from a certified reporter applying for renewal to verify compliance with the continuing education requirements. If the certified reporter fails to provide the requested documentation or additional information, the board may deem the application for renewal incomplete and deny renewal of certification.
- b. Proration of Continuing Education Requirement. A certified reporter whose certificate expires less than six months from the effective date of certification shall complete no less than five hours of continuing education credit during the balance of the certification period. In subsequent certification periods, the certified reporter shall complete the annual ten hour continuing education requirement. Proration of the continuing education requirement does not apply to certified reporters who previously held certification and allowed their certification to lapse.
- c. Extension of Continuing Education Requirements. A certified reporter seeking renewal of certification who has not fully complied with the continuing education requirement may request an extension of the requirement under the following conditions:
  - (1) The certified reporter submits a notarized written statement to the board, explaining the facts regarding non-compliance and requesting an extension of the requirements no later than the November 15<sup>th</sup> preceding the December 31<sup>st</sup> expiration of the certificate. Upon a showing of extenuating circumstances, the board may grant an extension of a maximum of 90 days for the certified reporter to complete the continuing education requirement.
  - (2) The board shall determine whether extenuating circumstances exist. In reviewing the request, the board shall consider if the certified reporter has been unable to devote sufficient hours to fulfill the requirements during the certificate period because of:
    - (a) full-time service in the armed forces of the United States during a substantial part of the certificate period;
    - (b) an incapacitating illness documented by a statement from a currently licensed physician;
    - (c) a physical inability to travel to the sites of approved programs documented by a statement from a currently licensed physician; or
    - (d) any other special circumstances the board deems appropriate.



- (3) A certified reporter whose certificate has been suspended or revoked by the board is not eligible to request an extension of the continuing education requirement.
- d. Random Audits of Compliance. During each renewal review period, the board shall request division staff to randomly select a specified number of certified reporters to demonstrate continuing education compliance through submission of proof of continuing education participation. Refusal or failure to respond to a board or division staff request for continuing education compliance documentation may result in denial of renewal of certification or disciplinary action pursuant to ACJA § 7-201(H) and this section.
- e. A certified reporter who fails to meet the continuing education requirement, falsifies continuing education documents, completes any portion of the continuing education requirement after December 31<sup>st</sup> or willfully misrepresents continuing education activities and attendance at continuing education activities is subject to any or all of the following actions by the board:
  - (1) Assessment of the delinquent continuing education fee;
  - (2) Denial of renewal of certification; and
  - (3) Disciplinary action pursuant to ACJA § 7-201(H) and this section.

#### 10. Board Decision Regarding Continuing Education Credits.

- a. Upon a review of continuing education documentation and any applicable additional information requested, the board may:
  - (1) Recognize compliance by the certified reporter with the continuing education requirement;
  - (2) Require additional information from the certified reporter seeking renewal before making a decision;
  - (3) Recognize partial compliance with the requirement and order remedial measures; and
  - (4) Enter a finding of non-compliance.
- b. Division staff shall notify the certified reporter, in writing, within ten days of the board's decision. A certified reporter may appeal the decision by submitting a written request for review by the board with division staff within fifteen days of receipt of notification of the board's decision. The certified reporter may request to appear before the board at the next available regularly scheduled board meeting.
- c. The certification of a reporter who timely appeals a decision by the board regarding continuing education shall continue in force until a final decision is made by the board.
- d. The board shall make the decision on the appeal in writing. The decision is final and binding.

## **ACJA 7-206 (M) – Transcript Format Standards**

**M. Transcript Format Standards.** Transcripts filed by certified reporters in courts in the state of Arizona shall conform to the following standards:

1. Applicability. Each transcript prepared by a certified reporter shall consist of the following pages:
  - a. Title page;
  - b. Table of contents and index page;
  - c. Appearance page; and
  - d. Certificate page.
2. Title Page.
  - a. Court Proceedings. The title page shall contain:
    - (1) Case caption;
    - (2) The type of proceedings: grand jury, jury trial, type of motion, etc.;
    - (3) The date of proceedings;
    - (4) The city and state where the proceedings were held;
    - (5) The name of the judicial officer;
    - (6) The name of the certified reporter, title (“certified reporter” or “CR”) and certificate number;
    - (7) A clear indication that a transcript is a partial transcript or excerpt; and
    - (8) Other applicable information.
  - b. Depositions and Other Non-court Proceedings. The title page shall contain:
    - (1) Case caption;
    - (2) The type of proceedings: deposition, sworn statement, unsworn statement, etc.;
    - (3) The date of the proceedings;
    - (4) The city and state where the proceedings were held;
    - (5) The name of the certified reporter, title (“certified reporter” or “CR”) and certificate number; and
    - (6) Other applicable information: excerpts, volume number.
  - c. Index Page.
    - (1) Court Proceedings. The index page, if applicable shall:
      - (a) Begin on a separate page;
      - (b) Show each witness name typed on the index page as it appears in the transcript: middle initial, no middle initial, full name, Jr., etc.;
      - (c) Indicate for each witness the page numbers of direct, cross, and redirect examination, etc.;

- (d) Show other important events and the page number they occur: jury selection, opening statements, closing arguments, verdict, etc.; and
- (e) Identify when exhibits are marked or introduced, admitted or excluded.

(2) Depositions and Other Non-court Proceedings. The index page shall:

- (a) Begin on a separate page;
- (b) Show the witness name typed on the index page as it appears in the transcript: middle initial, no middle initial, full name, Jr., etc.;
- (c) Indicate for each witness the page numbers of examination by each attorney or party;
- (d) Show other important events and the page number they occur; and
- (e) Identify when exhibits are marked or identified.

d. Appearance Page.

(1) Court Proceedings. The appearance page shall:

- (a) Begin on a separate page;
- (b) Indicate the name of the attorneys and which party they represent. Attorney addresses may be included;
- (c) Indicate parties appearing in propria persona; and
- (d) Indicate the names of the grand jurors present.

(2) Depositions and Other Non-Court Proceedings. The appearance page shall:

- (a) Begin on a separate page;
- (b) Identify the location where proceedings took place;
- (c) Indicate the time the proceedings began;
- (d) Indicate the name and address of the attorneys and which party they represent;
- (e) Indicate parties appearing in propria persona; and
- (f) Indicate all other individuals present in the room during the proceedings: videographers, interpreters, etc.

e. Certificate Page.

(1) Court Proceedings. The certificate page shall:

- (a) Begin on a separate page;
- (b) Contain language indicating the transcript is a full, true and accurate record of the proceeding;
- (c) Be signed and dated by the certified reporter; and
- (d) Include the reporter's certificate number.

(2) Depositions and Other Non-Court Proceedings. The certificate page shall:

- (a) Begin on a separate page;
- (b) Contain language indicating the transcript is a full, true and accurate record of the proceeding;
- (c) Contain language indicating the reporter administered an oath or affirmation to each witness whose testimony appears in the transcript pursuant to A.R.S. § 41-324(B);
- (d) Be signed and dated by the certified reporter;
- (e) Include the reporter's certificate number; and

- (f) Indicate whether the witness has requested signature, not requested signature or waived signature.

f. Transcript Formatting. All transcripts shall:

- (1) Contain 25 numbered lines of text on each page of the body of the transcript text with the exception of the last page. One blank line may be left before transitional events or headings, for example, a witness set-up paragraph or "examination," to ensure readability;
- (2) Contain page numbers at the upper right-hand corner. The page number does not count as a line;
- (3) Unless otherwise requested, begin at page one for each day of proceedings, even in multiple-day proceedings;
- (4) Contain total combined margins of text not to exceed 2 and 1/8 inches. The left-hand margin is measured from the left edge of the paper to the first character of text. The right-hand margin is measured from the right edge of the paper to the last character of text;
- (5) Use letter character size of no fewer than nine or ten characters to the inch;
- (6) Be double spaced in the body of the transcript;
- (7) Begin Question and Answer ("Q and A") designations no more than five spaces from the left-hand margin;
- (8) Begin text following Q and A designations at no more than ten spaces from the left-hand margin, with carryover Q and A lines beginning at the left-hand margin;
- (9) Begin speaker identification for colloquy at no more than fifteen spaces from the left-hand margin, with carryover colloquy beginning at the left-hand margin;
- (10) Begin quoted material no more than fifteen spaces from the left-hand margin, with carryover lines beginning no more than ten spaces from the left-hand margin;
- (11) Begin parentheticals and exhibit markings no more than fifteen spaces from the left-hand margin, with carryover lines beginning at the left-hand margin; and
- (12) Be bound in a professional manner.

g. Rough Drafts. An uncertified rough draft transcript shall not include a title page, appearance page, certificate page, any mention of the swearing in of a witness, footer with firm name or reporter name or CR number, index page, page numbers, line numbers, borders around the text on each page, or time stamping.

- (1) An uncertified rough draft transcript shall include a header or footer on each page stating "UNCERTIFIED UNEDITED ROUGH DRAFT TRANSCRIPT." The phrase "UNCERTIFIED UNEDITED ROUGH DRAFT TRANSCRIPT" shall be included in the body of the text occasionally.
- (2) In lieu of a title page, each rough draft shall begin with a disclaimer stating the uncertified rough draft transcript cannot be quoted in any pleading or for any other purpose and may not be filed with any court. The disclaimer

shall contain a brief identification of the contents, for example, John Smith deposition, 6/17/06. The certified reporter should keep a copy of the disclaimer.

**ARS 12-224. Salary; fees for transcripts; free transcripts; office supplies**

- A. The salary of the court reporter shall be fixed by the presiding judge of the court, with the approval of the board of supervisors of the county, and shall be paid by the county.
- B. The reporter shall receive from a party ordering an appeal transcript, two dollars fifty cents per page for the original, and thirty cents per page for each copy if ordered at the same time and by the same party.
- C. The reporter, when requested in advance, shall furnish free of charge to the county attorney or the attorney general a copy of the transcript of testimony when a transcript is made on an appeal in a criminal case, and to the attorney general when the state is a party.
- D. The reporter, when requested, shall furnish at county expense to the county attorney or the attorney general a copy of the transcript of testimony of any proceeding held in the superior court when the state or an instrumentality thereof is ordered to provide such transcripts by a federal court in a habeas corpus proceeding in the federal courts or when ordered by the Arizona supreme court to provide such transcripts in a habeas corpus proceeding in state court.
- E. The necessary supplies for conduct of the office of reporter shall be furnished by the county.

**ARS 12-225. Appointment of deputies; compensation**

- A. The court reporter may employ deputies who shall be compensated by him.
- B. When the reporter is prevented from performing his duties because of absence on public business, or when more than one judge is holding court at the same time in the county or any division thereof, the reporter may appoint a deputy to perform the services of reporter during the period and at the compensation the judge provides by order. Such compensation shall be a county charge.

**ARS 21-411. Appointment of reporter; transcript**

- A. The presiding judge of the superior court shall appoint a regularly appointed court reporter to record the proceedings before the grand jury, except the deliberations of the grand jury. The reporter's notes containing the proceedings from which an indictment is returned shall be transcribed and filed with the clerk of the superior court not later than twenty days following the return of the indictment, unless the court otherwise orders. Such transcript shall be made available to the prosecuting officer and the defendant. The transcript or a portion of the transcript may be denied to a defendant by the court upon a showing of extraordinary circumstances by a prosecuting officer. The reporter's notes which are not transcribed as provided in this section shall be filed with the clerk of the superior court and impounded and shall be transcribed only when ordered by the presiding judge of the superior court.
- B. The reporter and typists who transcribe the reporter's notes of grand jury proceedings shall be sworn by the foreman or acting foreman not to disclose any

testimony or the name of any witness except to the county attorney or other prosecuting officer or when testifying in court.

### **ARS 22-261. Judgments which may be appealed**

A. Any party to a final judgment of a justice of the peace may appeal therefrom to the superior court where the judgment or the amount in controversy exceeds twenty dollars, exclusive of costs.

B. The party aggrieved by a judgment in any action in which the validity of a tax, impost, assessment, toll or a statute of the state is involved may appeal to the superior court without regard to the amount in controversy.

C. An appeal shall be on the record of the proceedings if such record includes a transcript of the proceedings. De novo trials shall be granted only when the transcript of the proceedings in the superior court's evaluation is insufficient or in such a condition that the court cannot properly consider the appeal. A trial de novo shall not be granted when a party who had the opportunity to request that a transcript of the lower court proceedings be made and failed to do so. At the beginning of each proceeding the judge shall advise the parties that their right to appeal is dependent upon their requesting that a record be made of the justice court proceedings. Any party to an action may request that the proceedings be recorded for appeal purposes. The cost of recording trial proceedings shall be the responsibility of the court. The cost of preparing a transcript, if appealed, shall be the responsibility of the party appealing the case. The supreme court shall establish by rule the methods of recording trial proceedings for record appeals to the superior court, including but not limited to electronic recording devices or manual transcription.

### **ARS 32-4002. Definitions**

In this chapter, unless the context otherwise requires:

1. "Board" means the board of certified reporters.
2. "Certification" means a standard certificate that is issued by the board to a person who meets the requirements of sections 32-4021 and 32-4022 and does not include a temporary certificate.
3. "Certified reporter" means a person who is certified by the board and who records and transcribes a verbatim record in any sworn proceeding by means of written symbols or abbreviations in shorthand, machine writing or voice writing.
4. "Certify" means board authorization to engage in activities regulated by the board.
5. "Report" means to stenographically or by voice writing record and transcribe sworn proceedings.
6. "Voice writing" means the making of a verbatim record of the spoken word by means of repeating the words of the speaker into a device that is capable of digital translation into text.

### **ARS 32-4004 (A). Board of certified reporters**

A. The board of certified reporters is established consisting of the following members:

1. The chief justice of the supreme court or the chief justice's designee.
2. One judge of the court of appeals who is appointed by the chief justice of the supreme court.

3. One superior court judge who is appointed by the chief justice of the supreme court.
4. Two certified reporters who are residents of this state, who have been official court reporters for at least five years and who are appointed by the chief justice of the supreme court.
5. Two certified reporters who are residents of this state, who have been freelance reporters for at least five years and who are appointed by the chief justice of the supreme court.
6. One attorney who is a resident of this state, who has been licensed to practice law in this state for at least five years and who is appointed by the chief justice of the supreme court.
7. One public member who is appointed by the chief justice of the supreme court.

**ARS 32-4005. Program administration; duties**

A. The supreme court shall:

1. Administer the reporter certification program.
2. Adopt rules.
3. Establish and collect fees, costs and penalties that are necessary for the implementation and enforcement of the program.

B. The board shall:

1. Make recommendations to the supreme court regarding rules, policies and procedures to implement and enforce this chapter, including the following:
  - (a) Applicant testing.
  - (b) Fees.
  - (c) A code of conduct.
  - (d) Continuing education.
  - (e) Any other matter pertaining to certified reporters.
2. Determine through testing and other means an applicant's ability to make a verbatim record of proceedings that may be used in any court by means of written symbols or abbreviations in shorthand, machine writing or voice writing.
3. Issue certificates to qualified applicants.
4. Investigate and take disciplinary action pursuant to section 32-4006.
5. Require each applicant to submit a full set of fingerprints to the supreme court for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

**ARS 32-4022. Examination; requirements; exemption**

A. A person shall not be admitted to an examination without presenting satisfactory evidence to the board that before the date on which the application for an examination was filed the person has done at least one of the following:

1. Obtained one year of experience in making verbatim records of meetings, conferences, hearings or judicial or related proceedings by means of written symbols or abbreviations in shorthand, machine writing or voice writing and in transcribing these records.
2. Obtained a verified certificate of the satisfactory completion of a prescribed course of study from a court reporting school or a certificate from a school that evidences the

equivalent proficiency and the ability to make a verbatim record of material that is dictated pursuant to rules adopted by the supreme court.

3. Obtained a national court reporters association's registered professional reporter or registered merit reporter certificate.

4. Obtained a valid certificate to practice court reporting that is issued by a state other than this state if the other state's requirements and certifying examination are substantially similar to or more stringent than those in this state.

5. Demonstrated reasonable proficiency in making verbatim records of trial or judicial or other related proceedings by passing an approved examination for certification pursuant to rules adopted by the supreme court.

B. The examination for certification consists of the following two parts:

1. A national court reporters association's registered professional reporter examination, a national verbatim reporters association's certified verbatim reporters association examination or an alternative demonstration of proficiency approved by the supreme court.

2. A written knowledge test of rules of the supreme court of Arizona and statutes of this state relating to court reporters.

C. The board shall review the content and subject matter of the examination and shall make changes as deemed necessary.

D. The supreme court shall specify a date and place for the examinations.

E. Pursuant to rules adopted by the supreme court, an applicant who presents proof of having passed an examination approved by the supreme court including a national court reporters association's registered professional reporter examination, a national court reporters association's registered merit reporter examination, a national verbatim reporters association's certified verbatim reporters association examination or an alternative demonstration of proficiency approved by the supreme court and the test prescribed by subsection B, paragraph 2 may apply for certification without taking and passing the examination prescribed by subsection B, paragraph 1.

F. An applicant who fails to pass the examination prescribed by subsection B, paragraph 2 may apply for reexamination at any time.

G. An applicant shall be disqualified from taking any future examination if the board determines that the applicant engaged in fraud, dishonesty or corruption while taking the examination.

#### **ARS 32-4023 (A). Certificate renewal**

A. A certificate issued pursuant to this article is subject to renewal each year and expires unless renewed by December 31.

#### **ARS 32-4023 (D). Certificate renewal**

D. A certificate holder shall include with the application for renewal documentation satisfactory to the board that the certificate holder has successfully completed at least ten hours of approved continuing education each year.

#### **ARS 32-4024. Certificate denial**

A. The board may refuse to issue a certificate or to renew a certificate if the board finds that any of the following applies:



1. The applicant does not meet to the board's satisfaction the requirements under sections 32-4021 and 32-4022.
  2. The applicant has not been fingerprinted and the supreme court has not received and reviewed the criminal records check analysis.
  3. The applicant has not submitted the applicable documents and fees.
  4. The applicant committed fraud, dishonesty, corruption or material misrepresentation in applying for a certificate or on a certificate examination in this state or another state.
  5. The applicant has a record of conviction by final judgment of a felony offense or any other offense involving moral turpitude.
  6. The applicant is currently on probation, parole or community supervision for a felony offense or is named in an outstanding warrant.
  7. The court has ordered treatment for the applicant pursuant to title 36 or has found the applicant to be incapacitated pursuant to title 14.
  8. The applicant is subject to revocation or suspension of a certificate pursuant to section 32-4041 or has had any occupational or professional license denied, revoked or suspended.
  9. The applicant has been found civilly liable in an action involving fraud, misrepresentation, material omission, misappropriation, theft or conversion.
- B. Pursuant to rules adopted by the supreme court, the board may refuse to issue or renew a certificate for cause.

#### **ARS 32-4025. Administration of oaths**

A certified reporter may administer oaths and affirmations.

#### **Rules of Civil Procedures, Rule 30(a). When Depositions May Be Taken**

After commencement of the action, the testimony of parties or any expert witnesses expected to be called may be taken by deposition upon oral examination. Depositions of document custodians may be taken to secure production of documents and to establish evidentiary foundation. No other depositions shall be taken except upon: (1) agreement of all parties; (2) an order of the court following a motion demonstrating good cause, or (3) an order of the court following a Comprehensive Pretrial Conference pursuant to Rule 16(c).

If the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service which is completed under Rule 4.2 of these rules, leave of court, granted with or without notice, is required except that leave is not required: (1) if a defendant has served a notice of taking deposition or otherwise sought discovery or (2) if special notice is given as provided in subdivision (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

#### **Rules of Civil Procedures, Rule 30(b). Notice of Examination; General Requirements; Special Notice; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone**

(1) Absent a stipulation of all parties to the action or an order of the court authorizing a briefer notice, a party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action at least ten days prior to the date of the deposition. The notice shall state the date, time and place for taking the deposition, the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and the name and address of the person before whom the deposition shall be taken. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

If the deposition is to be recorded by audio or audio-video, the notice shall state the technique for recording the deposition and the protocols to be used for such recording, the identity of the person recording the deposition, and the placement of camera(s), if any.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the State of Arizona, and will be unavailable for examination unless the person's deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11(a) are applicable to the certification.

If a party shows that when the party was served with notice under this subdivision (b)(2) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) Unless the parties stipulate or the court orders otherwise, the deposition shall be recorded by a certified court reporter and may also be recorded by audio or audio-video means.

When a deposition is recorded only by a certified court reporter, the party taking the deposition shall bear the cost of the recording. If requested by one of the parties, the testimony shall be transcribed. If the testimony is transcribed, the party noticing the deposition or the party causing the deposition to be taken shall be responsible for the cost of the original transcript. A party may arrange to have a certified copy of the transcript made at the party's own expense. If audio or audio-video is additionally requested by one of the parties, the requesting party shall be responsible for the cost of such recording, and a party requesting an audio or audio-video copy of the deposition shall be responsible for the cost of the audio or audio-video copy.

When a deposition is recorded only by audio or audio-video means, the party noticing the deposition shall bear the cost of the recording. A party requesting an audio or audio-video copy of the deposition shall be responsible for the cost of the audio or

audio-video copy. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a certified transcript made at the party's own expense.

Any changes made by the witness, the witness' signature identifying the deposition as the witness' own or the statement of the officer that is required if the witness does not sign as provided in subdivision (e), and the certification of the officer required by subdivision (f) shall be set forth in a writing to accompany a deposition.

Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement or notation on the record by the officer that includes (A) the officer's name, certification number, if any, and business address; (B) the date, time and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. The officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state or note on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate or the court may order that a deposition be taken by telephone. For the purpose of this Rule and Rules 28(a), 37(a)(1), 45(c)(3)(A)(ii), and 45(e), a deposition is taken in the county where the deponent is to answer questions propounded to the deponent.

#### **Rules of Civil Procedures, Rule 30(c). Examination and Cross-Examination; Record of Examination; Oath; Objections**

Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Arizona Rules of Evidence. The examination shall commence at the time and place specified in the notice or within thirty minutes thereafter. And, unless otherwise stipulated or ordered, will be continued on successive days, except Saturdays, Sundays and legal holidays until completed. Any party not

present within thirty minutes following the time specified in the notice of taking deposition waives any objection that the deposition was taken without that party's presence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. If the deposition is taken telephonically and the witness is not physically in the presence of the officer before whom the deposition is to be taken, the officer may nonetheless place the witness under oath with the same force and effect as if the witness were physically present before the officer. The testimony shall be taken in accordance with subdivision (b)(4) of this rule.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. The court shall assess an appropriate sanction, including a sanction provided for under Rule 16(f), against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

**Rules of Civil Procedures, Rule 30(d). Length of Deposition; Motion to Terminate or Limit Examination**

Depositions shall be of reasonable length. The oral deposition of any party or witness, including expert witnesses, whenever taken, shall not exceed four (4) hours in length, except pursuant to stipulation of the parties, or, upon motion and a showing of good cause. The court shall impose sanctions pursuant to Rule 16(f) for unreasonable, groundless, abusive or obstructionist conduct.

At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

**Rules of Civil Procedures, Rule 30(e). Submission to Witness; Changes, Signing**

Before completion of the deposition and if not otherwise informed by counsel, the officer shall advise a deponent of the right to review, modify, and sign the transcript or affirm the accuracy of the audio or video recording. If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making

them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed. If the witness does not submit such a statement or a written explanation why such statement cannot be submitted within the time period provided, the officer shall indicate in the certificate prescribed by subdivision (f)(1) or by affidavit the fact of the refusal to submit a statement with the reason therefore, if any, and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to submit a statement require rejection of the deposition in whole or in part.

**Rules of Civil Procedures, Rule 30(f). Certification and Delivery by Officer; Exhibits; Copies**

(1) The officer must certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer must securely seal the deposition in an envelope or package endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and must promptly send it to the attorney who arranged for the transcript or recording, who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration. Documents and things produced for inspection during the examination of the witness must, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, the certified court reporter shall preserve the record of any deposition for a period of time corresponding to the applicable records retention and disposition schedules adopted by the Supreme Court. Upon payment of reasonable charges therefor, the certified court reporter shall furnish a copy of the transcript of the deposition to any party or to the deponent.

If the record of the deposition is created solely by audio or audio-video means, and unless otherwise ordered by the court or agreed by the parties, the officer shall retain the original recording of any deposition for a period of time corresponding to the applicable records retention and disposition schedules adopted by the Supreme Court in such place and manner as to ensure its availability to the court or any party upon request. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

**Rules of Civil Procedures, Rule 43(k). Preservation of verbatim recording of court proceedings**

(1) The official verbatim recording of any court proceeding is an official records of the court. The original of such verbatim recording shall be kept by the person who recorded it, a court-designated custodian, or the Clerk of the Superior Court in such place or places as shall be designated by the court. Unless the court specifies a different period for the retention of such verbatim recording, it shall be retained according to the records retention and disposition schedules and purge lists adopted by the Supreme Court.

(2) If a court reporter's verbatim recording has been delivered to the Clerk of the Superior Court or court-designated custodian and is to be transcribed, the court reporter who made the recording shall be given the first opportunity to make the transcription, unless that court reporter has been dismissed or has otherwise terminated the position as court reporter for the Superior Court or is unavailable for any other reason.

**Rules of Supreme Court, Rule 91(h) Uniform Size of Electronic and Paper Transcripts**

(1) The certified transcript of testimony of any proceeding shall be furnished by the authorized transcriber formatted for 8 1/2 by 11 inch paper having 25 lines per page with total combined margins of text not to exceed 2 and 1/8 inches.

(2) A deposition transcript, reduced in size, consisting of not more than four pages of text printed on one 8 1/2 by 11 inch page, may be furnished.

**Rules of Criminal Procedure, Rule 12.8. Record of proceedings before grand jury**

a. Reporter. The presiding or impaneling judge shall assign a regularly appointed certified court reporter to record the proceedings before the grand jury, except its deliberations.

b. Foreman. The foreman of the grand jury shall keep a record of the numerical count of the grand jury vote for and against such indictment. The foreman's record of the vote from which an indictment is returned shall be transcribed and filed with the clerk of the superior court no later than 20 days following the return of the indictment and made available to the prosecution and defendant only.

c. Filing of the Transcript and Minutes. The certified court reporter's verbatim record of the proceedings from which an indictment is returned shall be transcribed and filed with the clerk of the superior court no later than 20 days following the return of the indictment and the certified transcript shall be made available to the prosecution and defendant only.

**Rules of Criminal Procedure, Rule 31.2(b). Notice of appeal; automatic appeal; joint appeals**

b. Automatic Appeal When Defendant is Sentenced to Death. When a defendant has been sentenced to death, the clerk, pursuant to Rule 26.15, shall file a notice of appeal on his behalf at the time of entry of judgment and sentence. Such notice shall be sufficient as a notice of appeal by the defendant with respect to all judgments entered and sentences imposed in the case. Within 10 days after the filing of the notice of appeal in any capital case, the clerk of the superior court shall notify all authorized transcribers assigned to transcribe any portion of the proceedings that they are required to transmit their portions of the certified transcript to the clerk of the supreme court.

**Rules of Criminal Procedure, Rule 31.8 (b)(2) and (3). The record on appeal; transcript; duty of the authorized transcriber**

**b. Certified Transcript: Composition, Additions and Exclusions.**

(1) For the purpose of these rules, an "authorized transcriber" is a certified court reporter or a transcriber under contract with an Arizona court.

(2) *Composition.* Except in cases where the death penalty has been imposed, a certified transcript of the following proceedings shall be provided:

(i) Any voluntariness hearing or hearing to suppress the use of evidence.

(ii) The trial, except that the record of voir dire of the jury and the opening and closing arguments of counsel shall not be included unless specifically designated by a party.

(iii) Entry of judgment and sentence.

(iv) Probation violation proceeding.

(v) Aggravation-mitigation hearing.

(3) *Composition where the death penalty has been imposed.* The certified transcript shall consist of all recorded proceedings, including grand jury proceedings.

**Rules of Criminal Procedure, Rule 31.8 (d). The record on appeal; transcript; duty of the authorized transcriber**

**d. Duty of the Authorized Transcriber; Payment for Certified Transcript; Number of Copies.**

(1) The authorized transcriber shall prepare the certified transcript promptly upon receipt of a notice of appeal by the state or a notice of appeal indicating that the appellant proceeded as an indigent at the determination of guilt or at sentencing.

(2) Within 5 days after the filing of the notice of appeal or within 5 days after denial or a request to proceed as an indigent, an appellant who is not proceeding as an indigent shall make arrangements with the authorized transcriber to pay for the certified transcript. Thereupon the authorized transcriber shall promptly prepare the certified transcript. The authorized transcriber shall notify the appellate court if the appellant fails to make satisfactory arrangements within the prescribed time.

(3) The authorized transcriber shall promptly make any additions and deletions requested by the parties.

**Rules of Criminal Procedure, Rule 31.9. Transmission of the record**

a. Time for Transmission. Within 45 days after the filing of the notice of appeal, the clerk of the superior court shall transmit to the appellate court a copy of the pleadings, documents, and minute entries, and the original paper and photographic exhibits of a manageable size filed with the clerk of the superior court.

b. Duty to Certify and Transmit the Record. After certifying that it is true, correct, and complete as ordered, the clerk of the trial court and the authorized transcriber shall transmit to the clerk of the appellate court the portions of the record on appeal for which

each is responsible. Each shall number the items comprising that portion of the record on appeal and shall transmit with that portion a list of the items so numbered.

c. Extension and Reduction of Time for Transmission of the Record. The appellate court, on a showing of good cause, may grant one extension of the time for transmitting the record on appeal which shall not exceed 20 days or it may require the record to be transmitted at any time within the prescribed period. A copy of any order issued under this section shall be sent to the parties, the clerk of the trial court, and to the requesting authorized transcriber.

d. Transmission of Other Exhibits. The court, or any party upon motion made to the appellate court, may request the transmission of exhibits not automatically transmitted under Rule 31.9(a) when such are necessary to the determination of the appeal.

**Rules of Criminal Procedure, Rule 32.4 (d). Commencement of proceedings**

d. Transcript Preparation. If the trial court proceedings have not been previously transcribed, the defendant may request on a form provided by the clerk of court that certified transcripts be prepared. The court shall expeditiously review the request and order only those transcripts prepared that it deems necessary to resolve the issues to be raised in the petition. The preparation of the transcripts shall be at county expense if the defendant is indigent. The time for filing the petition shall be tolled from the time a request for the transcripts is made until the transcripts are prepared or the request is denied. Certified transcripts shall be prepared and filed within sixty days of the order granting the request.

**Administrative Order Number 2006-29**

**ACJA 3-402 - Records Retention and Disposition**